

NATIVE TITLE AGREEMENT MAKING RESEARCH RESOURCES

1. [Select Annotated Reference List](#)
2. [Useful Websites](#)

1. Select Annotated Reference List

Aboriginal Legal Rights Movement, *Agreeing on Native Title – Indigenous Land Use Agreements – A Government Template*, SA Indigenous Land Use Agreement (ILUA) Statewide Negotiations.

http://www.lga.sa.gov.au/webdata/resources/files/ILUA_Local_Government_Template_and_Explanatory_Documentation.pdf

The paper provides background information on ILUAs. It discusses the South Australian ILUA template which incorporates and is sensitive to key elements of indigenous culture. A series of frequently asked questions are used to explain the operation of ILUAs within the South Australian legislative framework.

Agius, Parry & Howitt, Richie. 2003, 'Different Visions, Different Ways: Lessons and challenges from the native title negotiations in South Australia', paper presented at the Native Title Conference 2003, Alice Springs NT 3-5 June 2003.

<http://ntru.aiatsis.gov.au/conf2003/papers/agius.pdf>

This paper criticises Australia's current Native Title system as more commonly affirming Aboriginal dispossession rather than returning country to Aboriginal people. Various lessons and challenges arising from the South Australian approach to Native Title settlement are examined, and the authors propose ten core principles for agreement building. The authors advocate grassroots social and political engagement of Aboriginal people and building their self-government capacity from the bottom up. The authors also argue that agreement making must be about building interpersonal relationships and ensuring strong community participation rather than being reduced to a legal definition.

Australian Local Government Association, 1998, *Working Out Agreements - a practical guide to Agreements between Local Government and Indigenous Australians*, ALGA and ATSIC, Canberra ([publications order form](#)).

This resource provides background information on agreements and a practical guide to agreement making between indigenous communities and local councils.

Australian Local Government Association, 1999, *Justice and Equity for All – Local Government and Indigenous Partnerships*, Canberra.

This publication contains a selection of case studies on successful joint-partnership models between local councils and indigenous communities.

Bauman, Toni. *Final Report of the Indigenous Facilitation & Mediation Project July 2003/04 – June 2006: research findings, recommendations and implementation*. Indigenous Facilitation and Mediation Project. Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.
http://ntru.aiatsis.gov.au/ifamp/research/pdfs/ifamp_final.pdf

The final report of the Indigenous Facilitation and Mediation Project (IFaMP) calls for more resources to be dedicated to the implementation of training programs to improve the procedural expertise of those participating in indigenous agreement making processes. In particular, it highlights the need to provide training and support for indigenous facilitators, negotiators and mediators. This is necessary to address the issues identified in research undertaken through the IFaMP and summarised in this report.

Bissell, Michael. 2004, 'Indigenous relations and agreement making in the minerals industry' paper presented at the Native Title Conference, 2004, Adelaide, SA 3-4 June 2004.
<http://ntru.aiatsis.gov.au/conf2004/papers/pdfs/MichaelBissell.pdf>

This document outlines the Minerals Council of Australia's approach to Indigenous relations as guided by its 'Indigenous Relations Engagement Strategy' and 'Indigenous Relations Statement'. The document discusses how to achieve mutually beneficial and sustainable outcomes through agreement making, and how to build capacity in the minerals industry.

Bradfield, Stuart. 2003, 'Treaties and agreements: towards decolonisation', *The Drawing Board: An Australian Review of Public Affairs*.

The paper discusses the question of a treaty between Indigenous and non-Indigenous Australians. Despite the reticent approach of state and federal governments towards treaty negotiations, the success of decolonisation internationally may result in positive discussion at home. The author urges advocates to frame their debates in terms of *why* as opposed to *what* a treaty should look like. Given the level of state progress the author questions the federal stalemate. State negotiations are possibly motivated by financial rather than humanitarian concerns. Yet this form of negotiation is significant as it engages disparate groups such as Aboriginal legal rights movements and farmers' federations. The paper concludes by highlighting the benefits of treaty agreements but cautions they are not a solution to indigenous disadvantage.

Bradfield, Stuart. 2003, 'A just agreement or just another agreement?' paper presented at the Native Title Conference 2003, Alice Springs, NT 3-5 June 2003.
http://ntru.aiatsis.gov.au/other/staff_profiles/ntconf_paper_just_agreement.pdf

This paper argues that agreement-making would be more effective in building relationships between Indigenous and non-Indigenous Australians if Indigenous peoples are treated as political communities, rather than interest groups to be accommodated. The author suggests that if Aboriginal people want recognition as 'nations' and 'peoples', as

their language would indicate, this should be built upon rather than talking up what are essentially resource agreements. The author also suggests that if Aboriginal communities around Australia actively sign treaties with each other, this could improve their participation in, and 'ownership' of, the process. There must be a shift from tokenistic consultation to agreement making. The concept of agreement making must encompass comprehensive settlements which are based on recognition of Indigenous status as First Nations.

Bradfield, Stuart. 2004, 'Agreeing to terms: What is a 'Comprehensive' Agreement?', *Land, Rights, Laws: Issues of Native Title*, Vol 2, No 26, Native Title Research Unit, AIATSIS, Canberra. <http://ntru.aiatsis.gov.au/ntpapers/ipv2n26.pdf>

Abstract: Disappointment with both the process and outcomes of Native Title litigation has led to an increased emphasis on agreement making, including 'comprehensive' agreement making. In seeking to define a 'comprehensive agreement', it is evident that a broad range of agreements currently fall under this general description. Dr Stuart Bradfield discusses a range of current Australian agreements, and (briefly) agreement making in Canada, and suggests that there is value in distinguishing 'comprehensive agreements' as a separate type of agreement with a broad subject matter and a distinct process of negotiation which is underpinned by recognition of Indigenous peoples as political entities.

Bradfield, Stuart. 2006 'Settling Native Title: Pursuing a Comprehensive Regional Agreement in South West Australia' in Langton, Mazel, Palmer, Shain, Tehan (eds) *Settling with Indigenous People*, The Federation Press, Sydney.

The chapter explores the attempted negotiation of an agreement between the Noonngar Nation of South West Australia and non-indigenous parties, including the state. The author examines the impact of the native title statutory regime upon the agreement-making process.

Edmunds, Mary (eds.). 1998, *Regional Agreements: Key Issues in Australia, Volume 1 and 2: Summaries*, NTRU, AIATSIS, Canberra.

These books provide a collection of case studies, overview papers, comparative analysis papers and other resources on regional agreements with indigenous people. The editor states that 'volume 1 was intended as a working document for Native Title Representative Bodies, industries, government and other parties to negotiations concerning agreements. Volume 2 is intended as a further and more detailed resource for those engaged in negotiations. It is hoped that both volumes may provide a contribution towards the development and establishment of Indigenous Land Use and other agreements.'¹

¹ Edmunds, Mary (eds.). 1998, *Regional Agreements: Key Issues in Australia, Volume 2: :Summaries*, NTRU, AIATSIS, Canberra., 4.

Everard, D. 2009, 'Scoping Process Issues in Negotiating Native Title Agreements'. AIATSIS Research Discussion Paper no. 23.

This paper is based on numerous interviews with individuals engaged in Native Title negotiations. Interviewees shed light on their negotiation experiences, including the obstacles to agreement, the strategies adopted, and the relationship of those strategies to the outcomes achieved. This discussion paper addresses 7 Elements of negotiation issues: Relationship, Communication, Interests, Opinions, Standards, Alternatives, and Commitment. Process issues in Native Title negotiations are highlighted by examining each of the 7 Elements, and illustrating their importance by use of examples.

Fox, Jo. 2004, 'History of Negotiated Agreements in Australia'. *Balayi: Culture, Law and Colonialism*, Volume 7.

This paper examined various negotiated agreements and how they differ in type, form and content. The examples of negotiated agreements discussed in this paper are: the Kakadu National Park Memorandum of Lease; the Commonwealth-State Housing Agreement; the Statement of Commitment between the Government of Western Australia and Aboriginal Western Australians; the Western Cape Communities Co-existence Agreement; the Tjurabalan Agreement that lead to a Native Title Consent Determination, South Australia's Draft Statewide Native Title (ILUA) Agreement, and the Torres Strait Treaty.

French, Justice Robert. 1996, 'Pathways to Agreements', in G. Meyers (ed), *The Way Forward: Collaboration "In Country"*, Proceedings of the Indigenous Land Use Agreements Conference, 26-29 September 1995, Darwin, NNTT/AGPS, Perth.

Justice French, describing the state of agreement making as at 1997, views agreements as a positive mechanism for resolving issues relating to native title, including intra-indigenous conflict. He advocates increased statutory support to protect the implementation of the agreements and to encourage more comprehensive and ambitious agreements, such as regional agreements.

Gardiner-Garden, John. 1999, '[From Dispossession to Reconciliation](#)', Parliament of Australia, *Parliamentary Library, Research Paper 27*, Social Policy Group, Canberra.

This paper traces the history of indigenous policy in Australia. The author traces the changes that have occurred from the period of dispossession and the policy of assimilation to the policy of self-determination and the process of reconciliation. In doing so, many issues are touched on and some of the obstacles for future policy development are identified.

Gibson, Chris. 1999, 'Rebuilding the Jawoyn Nation: regional agreements, spatial politics and Aboriginal self-determination in Katherine, Northern Territory' Vol1 *Australian Aboriginal Studies*, pp. 10-25.

The paper discusses the *Mt Todd agreement* between Jawoyn traditional land owners in the Katherine region of the Northern Territory and Federal and State governments and resource developers. The agreement highlights the effort of the Jawoyn in developing strategies for self-determination beyond the limits imposed by Australian governments through legislation. The paper, based on fieldwork conducted in Katherine during 1995-1996, discusses the background of Jawoyn land ownership and issues underlying Indigenous sovereignty.

Godden, Lee and Dorsett, Shaunnagh. 1999, 'The Contractual Status of Indigenous Land Use Agreements', *Land, Rights, Laws*, vol. 2, no.1, pp 1-13.
<http://ntru.aiatsis.gov.au/ntpapers/IPv2n1.pdf>

The paper examines some of the fundamental contractual principles Indigenous groups should bear in mind when negotiating Indigenous Land Use Agreements (ILUAs). It discusses the operation and impact of ILUA provisions, effects of Registration and the ambiguity of the contractual status of ILUAs under this process. The authors emphasise the need for parties to consider the effect of intergenerational agreements and contractual remedies when contemplating entering ILUAs under the *Native Title Act 1993* (Cth).

Howitt, Richie. 1997, '[The Other side of the table: Corporate culture and negotiating with resource companies](#)', *Regional Agreements Issues Papers*, No 3, pp 1 -12.

Abstract: 'In this paper, Dr Howitt aims to contribute to the improved understanding of regionalism and corporate culture as one step towards more successful negotiation strategies and the development of robust, durable and desirable outcomes for indigenous Australians.'²

Indigenous Support Services/ACIL Consulting, 2001, *Agreements between Mining Companies and Indigenous Communities: Report to the Australian Minerals and Energy Environment Foundation, Final Draft*, December.

The report provides some practical guidelines for agreement-making between mining companies and indigenous communities. In doing so it identifies key issues in agreement-making, mechanisms for overcoming potential problems and risks, and identification of examples of good practice. The guidelines are based upon the examination of a small number of case studies and the data collected from 140 agreements. Input was also provided by those who have experience working with indigenous communities and those who have negotiated between mining companies and those communities. The report acknowledges that the 'good practice' model can not provide an exhaustive identification

² Howitt, R. 1997. '[The Other side of the table: Corporate culture and negotiating with resource companies](#)', *Regional Agreements Issues Papers*, No 3, Abstract only, 1.

of approaches and considerations that parties should consider as good practice will necessarily evolve and change depending upon specific circumstances.

Jefferies, Sam. 2004, 'Building Relationships: Keeping an eye on the bigger picture', paper presented at the Native Title Conference 2004, Adelaide, SA 3-4 June 2004.
<http://ntru.aiatsis.gov.au/conf2004/papers/pdfs/SamJefferies.pdf>

This paper explores ways of achieving greater regional autonomy for Aboriginal and Torres Strait Islander people, using the experience of the Murdi Paaki Regional Council as a reference point. The author addresses the background to regional autonomy, the public policy setting, the experience of the Murdi Paaki Regional Council in implementing regional autonomy, and the government's administrative arrangements for service delivery for Indigenous people. The paper also discusses the lack of empowerment for Indigenous people and how greater collaboration between Government and Indigenous people is necessary.

Jull, Peter and Donna Craig, 1997, 'Reflections on Regional Agreements: yesterday, today and tomorrow' *Australian Indigenous Law Reporter*, vol. 2, no.4.

The authors draw upon international examples in Canada, Alaska and Greenland to argue that regional agreements empower indigenous communities and advance harmony and reconciliation. The nation-state is not fragmented or threatened; rather it is strengthened and improved. In Australia, political opposition, shallow public debates and the provision of insufficient resources to indigenous organisations, hinder the creation of comprehensive, effective regional agreements.

Kauffman, Paul. 1998, *Wik, Mining and Aborigines*, Allen & Unwin, St Leonards, NSW.

The book seeks to provide an understanding of mining agreements made with Aboriginal people in Australia during the past 30 years to inform current mining and native title debates. It considers how various arrangements have come into place, their success and what strategies should be applied in future negotiations. It outlines both major elements of successful mining agreements and a model for future agreements. At the heart of these agreements is the need for mining companies and other commercial groups to build long-term relationships with indigenous people.

Kingham, Fleur and Bauman, Toni, 'Native title mediation: issues identified, lessons learnt: proceedings and findings of IFaMP workshops with native title Indigenous and non-Indigenous mediators, February and March 2005', Report No 5. Indigenous Facilitation and Mediation Project. Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra
http://ntru.aiatsis.gov.au/ifamp/research/pdfs/ifamp_5.pdf

The paper summarises the outcomes of two workshops with native title mediators coordinated by the Native Title Research Unit (NTRU) at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) in 2005. The authors highlight

the difference between Native Title mediation and mainstream mediation. They urge mediators to incorporate community-specific methods of mediation and recognise the impact existing historical disputes and conflicts may have on the process. The paper recommends a more holistic approach to mediation; the incorporation of Indigenous expertise into the mediation process; and the development of specific native title standards which outline the roles and responsibilities of all participants involved in the mediation process.

Langton, Marcia & Palmer, Lisa. 2003, 'Negotiating Settlements: Indigenous peoples, settler states and the significance of treaties and agreements', in *Treaty Let's Get it Right*, AIATSIS & ATSIC, Canberra.

The paper explores the contemporary significance of agreement-making between indigenous people and other parties. Current trends in agreement making and the implications of such trends are explored. The paper seeks to contribute to the debate on the use of negotiated agreements to determine the way in which the land and its resources will be used, the way in which services are provided to indigenous communities and other related issues.

Langton, Marcia et.al. 2004, *Honour Among Nations? Treaties and Agreements with Indigenous People*, Melbourne University Press, Carlton

This book contains articles from a range of authors on the subject of agreement making, treaties and governance. Features of the collection include articles examining the process of agreement making, the role of agreement making within the context of the native title statutory regime, maritime agreements, mining agreements, the outcome of agreements, the international experience, and the possibility of a treaty between indigenous people and the government.

Llewellyn, David and Tehan, Maureen. 2005, '[Treaties](#)', '[Agreements](#)', '[Contracts](#)', and '[Commitments](#)' – What's in a Name? The Legal Force and Meaning of Different Forms of Agreement Making' *Balayi: Culture, Law and Colonialism*, Vol 7, pp 1-35.

The authors discuss the role of agreements as effective tool for engagement between Indigenous and non-Indigenous Australians. Agreements are a broad term and may be used to refer to regional agreements, treaties, indigenous land use agreements, Memorandums of Understanding etc. The particular focus of the paper is on the practical outcomes of each type of agreement and whether the agreement is likely to lead to a fair and just relationship between the parties involved. The aim is to assist native title holders, practitioners and claimants to 'choose the appropriate agreement for their purpose, and to understand the language, meaning and consequences of particular agreements'.³

³ Llewellyn, David and Tehan, Maureen '[Treaties](#)', '[Agreements](#)', '[Contracts](#)', and '[Commitments](#)' – What's in a Name? The Legal Force and Meaning of Different Forms of Agreement Making' (2005) *Balayi: Culture, Law and Colonialism*, Vol 7, 8.

McClelland, Robert. National Native Title Conference, Australian Institute of Aboriginal and Torres Strait Islander Studies, Melbourne Cricket Ground, 5th June 2009.
http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/Speeches_2009_5_June2009-AustralianInstituteofAboriginalandTorresStraitIslanderStudies

The speech given by Attorney General Robert McClelland to the 2009 Native Title Conference briefly outlines current federal native title policy. The Attorney General discusses the Native Title Amendment Bill 2009 and how it has increased the efficient processing of native title claims. The Bill allows the Court to make consent orders on matters other than native title. This allows the native title process to extend beyond bare native title rights to include deals such as land access agreements. The Victorian alternative settlement framework is also presented as a positive example of state governments taking a proactive approach to recognising native title through negotiation rather than litigation.

Meyers, Gary (eds.). 1996, *The Way Forward: Collaboration and Cooperation "In Country"*, NNTT, Perth.

This book compiles proceedings from the 1995 Indigenous Land Use Agreements (ILUA) Conference. Of interest are the articles by Justice French and Professor O'Faircheallaigh. Both authors review possible methods of agreement making and the importance of placing traditional land ownership at the centre of negotiations.

Minerals Council of Australia, Submission to the Indigenous Land Use agreements inquiry, Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Inquiry into Indigenous Land Use Agreements (ILUA).
http://www.aph.gov.au/senate/committee/ntlf_ctte/completed_inquiries/1999-02/report_19/submissions/sub10.pdf

The submission outlines the perceived limitations of ILUAs and suggests possible amendments to the *Native Title Act* (Cth) (NTA). The Minerals Council is concerned by the expense involved in negotiating ILUAs and Native Title Representative Bodies (NTRB) lack of resources which prevent them from engaging effectively in negotiations. The Council calls on the Commonwealth Government to allocate sufficient, dedicated funds to NTRBs which would enable them to effectively participate in ILUA negotiations.

Neate, Graeme. 2004, 'Agreement-making and the Native Title Act' in Langton, Palmer, Tehan, Shain (eds) *Honour Among Nations? Treaties and Agreements with Indigenous People*, Melbourne University Press, Melbourne.

This chapter examines the background to the Native Title Act, its current status and its emphasis on the use of agreement-making as a mechanism for the resolution of disputes relating to native title. Further, the author discusses judicial support for agreement making under the NTA, the process of mediation leading to consent determinations of native title, and agreements associated with determinations of native title.

Neate, Graeme. 2000, 'Mediating Native Title Agreements: Developing National Native Title Tribunal Practice', paper presented at the Native Title Conference 2004, Adelaide, SA.

<http://ntru.aiatsis.gov.au/conf2004/papers/pdfs/GraemeNeate.pdf>

This paper deals with National Native Title Tribunal practice in light of: what the *Native Title Act* says about mediation; the legal and other contexts in which native title mediation occurs; the purpose of native title mediation (including the range of possible outcomes); some of the special features of native title mediation and the factors that affect the pace at which mediation occurs; and the phases through which most native title applications move (from filing an application to resolution by agreement or following a trial).

Nurse-Bray, Melissa. 2000, 'What's up at Cape York', *Habitat Australia*, April, 26-27.

The author discusses the difficulty of implementing the Heads of Agreement and Cape York Peninsula Land Use Strategy without proper government funding and effective community participation at the implementation stage.

O'Faircheallaigh, Ciaran. 1995, '[Mineral Development Agreements Negotiated by Aboriginal communities in the 1990s](#)', *Discussion Paper* No. 86/1995, CAEPR, ANU, Canberra.

Abstract: 'This paper describes and critically examines five resources development agreements signed between mining companies and Aboriginal communities between 1992 and 1994 in the Northern Territory and north Queensland. These include the Mt Todd Agreement, the McArthur River Agreement, the Cape Flattery-Hope Vale Agreement, the Mapoon-Skardon River Agreement and the Placer Pacific Kalkadoon Tribal Council Agreement. It also discusses the general approach adopted by the Northern Land Council in the Northern Territory to negotiating exploration licence agreements under the Aboriginal Land Rights (Northern Territory) Act 1976... [The] The paper analyses the broader context within which the five recent agreements examined were negotiated and assess the purposes and contents fo the agreements themselves. In conclusion, the author comments on the broader political significance of some general trends that emerge from the cases considered and suggest criteria for evaluating these agreements.'⁴

O'Faircheallaigh, Ciaran. 2000, '[Negotiating Major Project Agreements: The 'Cape York Model'](#)', *AIATSIS Research Discussion Paper No 11*, Canberra.

The paper provides a model for the negotiation of major agreements between Indigenous people and developers, labeled the 'Cape York Model.' The model is drawn from the

⁴ O'Faircheallaigh, C., 1995, '[Mineral Development Agreements Negotiated by Aboriginal communities in the 1990s](#)', *Discussion Paper* No. 86/1995, CAEPR, ANU, Canberra (abstract only).

work on agreement-making undertaken over eight years by Cape York Aboriginal communities and the Cape York Land Council, and the NTRB for Cape York. It may be used as an initial framework and may evolve or be departed from where required. The seven stage model aims to enhance the capability of Aboriginal people to make informed decision, by minimising costs and making the best use of available resources, and by using a process whereby traditional owners of the land and the community have a high degree of control over decisions relating to land. The model offers benefits for the developer in terms of minimisation of uncertainty through increased transparency.

O’Faircheallaigh, Ciaran. 2003, 'Implementation of Mining Agreements in Australia and Canada', *Aboriginal Politics and Public Management Research Paper* No. 13, Griffith University, Brisbane.

This paper discusses the issues surrounding the implementation of agreements between indigenous people, government and developers. Whilst there is evidence to suggest that the creation of agreements do not actually lead to the desired outcomes, there is little literature on the issue of implementation of agreements. Thus, the author begins to canvass key issues at all stages of the agreement-making process that hinder effective implementation of the terms of the agreement with the aim of setting up a framework for future research on implementation.

O’Faircheallaigh, Ciaran. 2004, 'Native Title and Agreement Making in the Mining Industry: Focusing on Outcomes for Indigenous Peoples' *Land, Rights, Laws: Issues of Native Title*, Vol. 2, No. 25. Native Title Research Unit, AIATSIS, Canberra.

The author discusses the advantages and disadvantages of agreement making for indigenous people. He identifies possible criteria for measuring the outcomes of agreements and the complex issues in evaluating these outcomes. The need for further research in specific areas is noted.

O’Faircheallaigh, Ciaran. 2007, 'Native Title and Mining Negotiations: A Seat at the Table, But No Guarantee of Success' *Indigenous Law Bulletin*, Vol. 21, No. 6.
<http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/ILB/2007/21.html?query=native%20title%20agreements>

This paper provides advice on strategies for improving the outcomes of the agreement-making process. By developing broader legal, organisational and political strategies, indigenous parties can strengthen their position in negotiations with better resourced mining companies. The importance of adopting strategies aimed at ensuring flexible, good faith negotiations and of developing strategies to minimise conflict within indigenous group participating in the negotiation, is emphasised.

O’Faircheallaigh, Ciaran. 2004, 'Evaluating Agreements Between Indigenous People and Resource Developers' in Langton, Marcia, et. al. *Honour Among Nations? Treaties and Agreements with Indigenous People*, Melbourne University Press, Carlton.

This paper is concerned with the identification and assessment of outcomes or results of agreement making. It seeks to contribute to the development of criteria for the evaluation of agreements.

Office of Native Title, Western Australia, 2006, *Alternative Settlements Framework: Draft Issues Paper*

http://www.nativetitle.wa.gov.au/uploadedFiles/Alternative_Settlements/Issues%20paper.pdf

This paper reports on the major issues identified in submissions to the Alternative Settlements Consultation Paper. The Alternative Settlements Consultation Paper outlined the Western Australian Government's proposed framework for the alternative settlement of native title. The proposed approach would involve the voluntary surrender of any potentially claimable native title rights and interests in a determined area in exchange for tangible benefits. The consultation was released in October 2005 for public consultation and comment. Many of the submissions identified the requirement to surrender all possible native title rights and interests as a critical issue. Retaining this element of the proposed Alternative Settlements Framework would severely limit support for the framework and thus would constitute a significant barrier to its implementation. The paper states that the State Government is considering the issues identified through the feedback process and intends to release a final Alternative Settlements Framework in the near future.

Phillips, S. 2000, 'Enforcing Native Title Agreements: Carriage v Duke Australia Operations', *Indigenous Law Bulletin*, Vol 5, 14-16.

Case note on Carriage v Duke Australia Operations [\[2000\] NSWSC 239](#). In this case, indigenous plaintiffs were successful in seeking an injunction against an international energy company. This was the first time an injunction has been granted to protect indigenous people's right to negotiate under the Native Title Act 1993 (Cth). Protection of the right to negotiate under the NTA is important because, as the author notes 'agreements reached under the right to negotiate regime can fill some of the voids which exist in the legislative processes designed to afford protection to indigenous cultural heritage' (pp16).

Senior, Clive. 1998, '[The Yandicoogina Process: A Model for Negotiating Land Use Agreements](#)', *Land, Rights, Laws: Issues of Native Title, Regional Agreements paper no. 6*, Native Title Research Unit, AIATSIS, Canberra.

The paper examines the process that led to Yandi Land Use Agreement between Gumala Aboriginal Corporation and Hamersley Iron Pty Limited in 1997. The author, a mediator in the process, describes the five key stages and the elements of each stage. He notes that whilst the process took almost two years in total, a satisfying agreement was reached without outside intervention, providing the parties with a sense of achievement and satisfaction.

Sheiner, P. 2001, [The Beginning of Certainty: Consent Determinations of Native Title](#), *Land, Rights, Laws*, vol 2(12), pp 1-12.

Abstract: 'This paper discusses the use of Federal Court consent determinations to resolve native title determination applications. These determinations arguably provide an expeditious means of settling native title issues, particularly the description of native title holders and their rights and interests. The paper also sketches the implications of consent determination for representative bodies and peak industry groups.'⁵

Smith, Diane. 1998, 'Indigenous Land Use Agreements: The Opportunities, Challenges and Policy Implications of the Amended Native Title Act' *Discussion Paper No. 163*, CAEPR, ANU Canberra
www.anu.edu.au/caepr/printpdf/node/510

This paper discusses the role of Indigenous Land Use Agreements (ILUA) within the Native Title statutory framework. At the time of writing, the ILUAs had been proposed, but not implemented as a statutory mechanism for agreement-making for Native Title issues. The author examines the advantages and disadvantages of ILUAs generally and of the proposed legislative measures contained in the Native Title Amendment Bill 1997 specifically. The complex issues that may arise in agreement-making between indigenous communities and relevant parties are canvassed.

Stacey, Brian. 2004, 'Co-existence, Partnerships and Economic Relationships: Agreements in Economic Developments' paper presented at the *Native Title Conference*, Adelaide.
<http://ntru.aiatsis.gov.au/conf2004/papers/pdfs/BrianStacey.pdf>

The author notes the importance of not only examining the process of agreement making, but in effectively evaluating the outcomes. Whilst there is much optimism about the potential for agreement making to improve indigenous economic development, it is important to also identify any negative consequences of the agreements formed. It is argued that through the identification of the risks involved in making agreements, parties can better manage the agreement process and outcomes to avoid negative outcomes. Consequently, the agreements are more likely to lead to better educational and economic benefits for indigenous people.

Strelein, Lisa. 2000, *Native Title in Perspective: Selected Papers from the Native Title Research Unit 1998–2000*

⁵ Sheiner, P. 2001, [The Beginning of Certainty: Consent Determinations of Native Title](#), *Land, Rights, Laws*, vol 2(12), pp 1-12, abstract only.

This book contains a selection of papers from the Native Title Research Unit at the Australian Institute of Aboriginal and Torres Strait Islander Studies, 1998 -2000. Issues covered by the papers include; the politics of the Native Title Amendment Act, mediation and negotiation, the registration test under the NTA, determining the boundaries of claim areas and international perspectives and experiences.

Strelein, Lisa. 1998, *Working with the Native Title Act: Alternatives to the Adversarial Method*. Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

This book is comprised of a collection of presentations and responses to the presentations given at a workshop for legal practitioners, organised by the NTRU at AIATSIS in June 1997. The purpose of the work shop was to explore the practical and strategic issues surrounding the use of non-adversarial methods within the native title statutory regimes.

Sullivan, Patrick. 2005, '[Complexity in the New Regime for Indigenous Affairs Policy and Administration: Implications for Native Title Mediation and Facilitation](#)' (Seminar paper presented at the Native Title, Decision-making and Conflict Management Seminar Series, Australian Institute for Aboriginal and Torres Strait Islander Studies, Canberra, 23 May 2005).

Abstract: 'This paper considers the complexity introduced into Aboriginal affairs by the government's adoption of a whole of government policy approach. One arena of complexity is the government's commitment to expand Shared Responsibility Agreements (SRAs) to include the delivery of multiple services, and to forge Regional Partnership Agreements (RPAs) to assist in implementing these. Clearly these need to engage with existing and potential native title rights in land and with currently contracted arrangements such as Indigenous Land Use Agreements. In this paper new approaches in anthropology which question the divided and discrete image of Aboriginal groups are compared to new approaches in public policy theory that question command and control models of administration. Both are seen to share much in common and to have relevance to whole of government engagement with Indigenous peoples. Nevertheless, the complexity of negotiating multi-factoral SRAs and multi-party RPAs, in an environment where native title determinations cut across previous land title categories, and historical indigenous interests, requires skilled facilitation and mediation to be added to the administrator's toolkit.'⁶

Sullivan, Patrick. 'Regional Agreements in Australia: An Overview Paper', *Land, Rights, Laws: Issues of Native Title*, Issues paper no. 17, April 1997, pp.1-12.

The paper deals with the pressures of producing interest in agreed structures for managing the interests of indigenous and non-indigenous groups. It discusses the types of agreements reached or available, appropriate terminology to describe them, common

⁶ AIATSIS, 2005, Seminar Series Abstracts: Native Title, Decision-making and Conflict Management (28 February - 23 May 2005)
http://www.aiatsis.gov.au/research_program/events2/past_seminar_series/2005_papers/abstract#Sullivan

features in the process of negotiating these agreements and the impact of current government policy. The author offers a multifaceted approach to examining regional agreements. This approach is more likely to achieve key outcomes such as the implementation of indigenous rights, security of development rights for those with a commercial interest in indigenous land, and sound regional administration.

Tehan, Maureen. 1997, 'Indigenous Peoples and Negotiated Agreements: Experiences and Post Mabo Possibilities for Environmental Management', *Environmental and Planning Law Journal*, vol. 14, pp. 114-134.

Abstract: 'This article considers the ways in which Indigenous peoples might enhance environmental management while also achieving their aspirations in relation to land ownership, management and control. It argues that the fundamental difficulty that has prevented meaningful involvement has been divergent knowledge paradigms which have resulted in unequal and unvalued contributions to management by Indigenous peoples. New possibilities for enhanced involvement have been raised by the emergence of native title. However, to date, statute, common law and practice do not suggest that any meaningful advances have been achieved. The development of a legally enforceable regime that adequately values Indigenous knowledge is yet to be achieved.'⁷

Wyatt, Brian 'Agreement – The key to sharing Australia's wealth', paper presented at the Native Title Conference 2005, Coffs Harbour, NSW 2-3 June 2005.
<http://ntru.aiatsis.gov.au/conf2005/papers/WyattB.pdf>

The author advocates for an increased focus upon agreement making as a mechanism for resolving native title claims. It is argued that agreement making offers a means of overcoming the central problems with the current native title system, including issues of cost, time and justice. The regional land council in the Goldfield region in Western Australia has successfully adopted this agreement focused approach to Native Title. The agreement made have not only settled disputes over land use, but have led to increased economic participation and social empowerment for indigenous people in the community.

Yu, Peter. 1999, 'Possibilities for regional agreements in the Kimberley in the wake of the Miriuwung Gajerrong decision' *Indigenous Law Bulletin*, vol. 4, no. 21, pp. 24-26.

This paper examines the native title determination, *Ben Ward & Others v State of Western Australia & Others*, Federal Court, 24 November 1998, known as the 'Miriuwung Gajerrong decision'. The determination added to the jurisprudence on the relationship between native title and the common law. For instance, it was held that native title should not be viewed as a bundle of rights; rather it is a 'root title' upon which specific rights depend for their existence. Further, where both native title and non-native title right co-exist, the parties should negotiate an agreement as to how the rights will be exercised. Following the Miriuwung Gajerrong decision, the state government showed

⁷ Tehan, M. 1997 'Indigenous Peoples and Negotiated Agreements: Experiences and Post Mabo Possibilities for Environmental Management', *Environmental and Planning Law Journal*, vol. 14, pp. 114-134, abstract only.

reluctance to negotiate an agreement. The author argues that this is a costly and unproductive position as there are clear benefits to be obtained for both parties in entering into negotiated agreements.

2. Useful Websites

[Agreements, Treaties and Negotiated Settlements Project](http://www.atns.net.au/)

<http://www.atns.net.au/>

The Agreements, Treaties and Negotiated Settlements (ATNS) project is an ARC Linkage project examining treaty and agreement-making with Indigenous Australians and the nature of the cultural, social and legal rights encompassed by past, present and potential agreements and treaties. It provides ATNS publications, online papers, recommended reading lists and other resources on agreement making.

[Centre for Aboriginal Economic Policy Research](http://www.anu.edu.au/caepr/)

<http://www.anu.edu.au/caepr/>

CAEPR provides a range of discussion papers, working papers and resources on indigenous issues with the aim of improving outcomes for indigenous Australians by informing intellectual understanding, public debate and policy development.

[Corporate Responsibility: Developing Human Rights Principles for Resource Development on Aboriginal Land](http://www.humanrights.gov.au/social_justice/publications/corporateresponsibility/index.html) (A joint project by HREOC and Griffith University)

http://www.humanrights.gov.au/social_justice/publications/corporateresponsibility/index.html

Provides materials developed at a forum entitled 'Resource Development on Aboriginal Land; a Human Rights Approach', which took place in Alice Springs in May 2002. The forum was co-hosted HREOC and Griffith University, with participants including representatives from Indigenous communities, mining companies and NGOs.

[Limits and Possibilities of a Treaty Process in Australia](http://matrix.aiatsis.gov.au/research_program/events2/past_seminar_series/2001) (Papers from the AIATSIS Seminar Series Semester 1 2001)

http://matrix.aiatsis.gov.au/research_program/events2/past_seminar_series/2001

Papers from a range of authors on the theme 'The Limits and Possibilities of Treaty Process in Australia.'

[National Native Title Tribunal](http://www.nntt.gov.au/Pages/default.aspx)

<http://www.nntt.gov.au/Pages/default.aspx>

Set up under the Native Title Act, the Tribunal is a federal government agency and is part of the Attorney-General's portfolio.

The Tribunal:

- applies the registration test to native title claimant applications
- mediates native title claims under the direction of the Federal Court of Australia
- provides notification of native title applications and indigenous land use agreements
- maintains the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements

- makes arbitral decisions about some future act matters
- Negotiates other sorts of agreements, such as indigenous land use agreements.

Information about these decisions is available on the website.

On request, the Tribunal can provide assistance and information to all people involved in the native title process.

[Native Title Negotiations \(South Australia\)](#)

<http://www.iluasa.com.au/>

Information about negotiations for resolving Native Title claims in South Australia. The site provides information about the process of negotiation, who is involved and the outcomes of negotiations so far.

[Regionalism, Indigenous Governance and Decision Making](#) (Papers from the AIATSIS Seminar Series Semester 1 2004)

http://matrix.aiatsis.gov.au/research_program/events2/past_seminar_series/2004#one

Contains papers from a range of authors on the theme of Regionalism, Indigenous Governance and Decision Making

[South West Aboriginal Land and Sea Council](#)

<http://www.noongar.org.au/>

The South West Aboriginal Land and Sea Council (SWALSC) is a representative body of the Noongar people, the traditional owners of the South West of Australia. SWALSC works with its members to find resolution for native title claims as well as advancing the Noongar Culture, language and society.

[Torres Strait Regional Authority](#)

<http://www.tsra.gov.au/>

The website contains information about the history and culture of the Torres Strait Islander People and the specific programs and projects undertaken by the Torres Strait Regional Authority (TSRA). The TSRA is an Australian Statutory Authority established in 1994. It aims to strengthen the economic, social and cultural development of the Torres Strait to improve the lifestyle and wellbeing of Torres Strait Islanders and Aboriginal people living in the region.