

# **Native Title Report**

# **2004**



*Human Rights and  
Equal Opportunity Commission*

## Artist Acknowledgement

© Nyuju Stumpy Brown  
*Ngupawarlu*, 2003  
Synthetic polymer paint on canvas  
183 x 151.5cm

Photo Gilbert Herrada, courtesy of  
the Museum and Art Gallery of the  
Northern Territory

Private collection

*Ngupawarlu* depicts *tali* (sandhill)  
country. Nyuju Stumpy Brown states  
that 'There are high *tali* all around the  
waterhole. This is my *jarriny* place,  
(place of Nyuju's birth totem). The  
water here is not very good, you can  
only drink a little bit, otherwise you  
get sick with stomach-ache. We lived  
all around here before. We got  
*jirrilypaja* and *karnti* (bush yams).  
We were living here, no flour, no tea,  
nothing. That was before we knew  
any kartiya (non-Aboriginal people).  
Only now we live with kartiya, since  
we came from the desert on camel  
to Balgo.'

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Corporation.

Courtesy of the artist and  
GRANTPIRRIE Collection

We thank Nyuju Stumpy Brown,  
Bridget Pirrie and Mangkaja Arts  
Resource Agency for granting us  
permission to use the image on  
the cover.



# Native Title Report

# 2004

*Aboriginal & Torres Strait Islander  
Social Justice Commissioner*



*Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner to the  
Attorney-General as required by section 209(1) Native Title Act 1993.*

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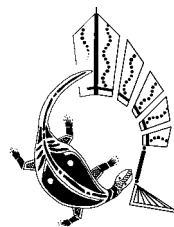
## Acknowledgements

The Aboriginal and Torres Strait Islander Social Justice Commissioner acknowledges the work of Human Rights and Equal Opportunity Commission staff (Margaret Donaldson, Yvette Park, John Southalan, Sarah Low and Graziella Obeid) in producing this report.

During the consultations discussed in this year's report, the Commissioner received valuable contributions from all participants. The Commissioner would like to record his grateful appreciation for the time and information made available by individuals and officers from: Aboriginal and Torres Strait Islander Services, Aboriginal Legal Rights Movement, ANU North Australia Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Cape York Land Council, Carpentaria Land Council, Central Land Council, Central Queensland Land Council, Centre for Aboriginal Economic Policy Research, Chalk and Fitzgerald, Department of Immigration and Multicultural and Indigenous Affairs, Gilbert + Tobin Centre of Public Law – University of New South Wales, Goldfields Land and Sea Council, Gurang Land Council, Jumbunna Indigenous House of Learning – University of Technology Sydney, Larrakia Nation Aboriginal Corporation, Native Title Services Victoria, Ngaanyatjarra Land Council, North Queensland Land Council, Northern Land Council, NSW Native Title Services, Office of Indigenous Policy-Northern Territory government, Queensland South Representative Body, South Australian Chamber of Mines and Energy, South Australian Farmers Federation, South Australian Fishing Industry Council, South Australian Government – ILUA negotiation team, South West Aboriginal Land and Sea Council, University of Western Australia, Susan Phillips (Barrister), Western Australian Chamber of Minerals and Energy, Western Australian Local Government Association, Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation, Yarrabah Local Council, Yorta Yorta Nation and the Wongatha group.

## About the Social Justice Commission logo

The right section of the design is a contemporary view of a traditional Dari or head-dress, a symbol of the Torres Strait Islander people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commission. The dots placed in the Dari represent a brighter outlook for the future provided by the Commission's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.



The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Social Justice Commission and the support, strength and unity which it can provide through the pursuit of Social Justice and Human Rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander Social Justice expressing the hope and expectation that one day we will be treated with full respect and understanding.

© Leigh Harris.

**Human Rights and Equal Opportunity Commission**



17 February 2005

The Hon Philip Ruddock MP  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I am pleased to present to you the *Native Title Report 2004*.

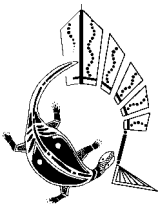
The report is provided in accordance with section 209 of the *Native Title Act 1993*, which provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner submit a report regarding the operation of the *Native Title Act* and its effect on the exercise and enjoyment of the human rights of Aboriginal peoples and Torres Strait Islanders.

This year's report examines a set of principles for promoting economic and social development through native title. The principles are based on strategies for sustainable development and capacity building and have been developed in consultation with NTRBs and other native title stakeholders.

I intend to further develop the principles and their application to the native title system through discussions with Commonwealth, State and Territory governments in the coming year.

Yours sincerely

Tom Calma  
Aboriginal and Torres Strait Islander  
Social Justice Commissioner



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## Preface

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During 2004, the Federal Government announced substantial changes to the way that it delivers services to Indigenous communities and how it engages with Indigenous peoples. The new changes included the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) and Aboriginal and Torres Strait Islander Services (ATSIS) and the transfer of all Indigenous specific programs to mainstream government departments. The Federal Government also announced that all government departments would be required to implement a 'whole of government' approach to service delivery in Indigenous communities, focusing specifically on regional service delivery. Shared responsibility agreements (SRAs) are the mechanism for implementing this approach.

The overall changes being implemented by the Federal Government have become known as the 'new arrangements for the administration of Indigenous affairs'. The new arrangements are discussed in detail in the Social Justice Report 2004 and are considered in the context of native title agreement making and policies in this Report.

What has emerged as a result of the Commonwealth's new arrangements are two structures for agreement making within Indigenous communities – native title agreement making and SRAs.

The latter are based on the Council of Australian Governments (COAG) trials which emphasise improved service delivery; whole of government strategies; partnerships; flexibility; community governance and capacity building. These trials also aim to invest in community leadership; improve government service delivery and promote economic independence for Indigenous communities.

Native title agreements focus on resolving legal issues; managing land use; and addressing compensation. But there is increasing recognition that native title agreements need to be more flexible to ensure practical and sustainable outcomes for all stakeholders.

As a result of this recognised need for flexibility, there is an opportunity within native title agreements to explore strategies for agreement making learnt in the COAG trials. Both myself and the previous Social Justice Commissioner recognise the need to consider the role of capacity development, partnerships, community leadership and economic development within the context of native

title agreements. This was started in the 2003 Native Title Report and is further developed in this Report.

The 2003 Report presented broad principles for economic and social development through native title. This Report, through a national consultation process with NTRBs, further develops these principles and discusses them in the context of the new arrangements.

The consultations highlighted important issues for any type of agreement making, including: effective community decision making; community engagement and ownership of the process and agreement; and adequate time and resources for capacity development and good decision making structures.

The recognition of traditional ownership is the foundation of native title and provides the basis on which to build stronger decision making structures linked to traditional authority. It also provides invaluable opportunities for economic and social development based on traditional ownership of land integrated with the broader community's aspirations, and through positive and productive relationships with external businesses and governments.

All SRAs need to take account of the special role of traditional owners within Indigenous communities. Native title agreements recognise and reflect this special role. Promoting two parallel processes of agreement making without any cross-agreement engagement or without similar processes runs the risk of ignoring the character of the community, may exacerbate existing differences and threaten the long term sustainability of both native title or shared responsibility agreements.

Governments and Indigenous peoples must take the opportunity to exploit this window of opportunity to reform the agreement making processes to ensure that sustainable and meaningful improvements and advancements for Indigenous Australians are realised within this generation.

**Tom Calma**

Aboriginal and Torres Strait Islander  
Social Justice Commissioner,  
February 2005