



# Aboriginal Way

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Above: Greg Hughes, Quentin Agius, Fred Agius and Raymond Agius at Survival Day 2017. Full story on page 9.

## SA Treaty talks underway

**Aboriginal people in South Australia are being asked to share their ideas about what treaty with the State Government might look like.**

Following an announcement by the South Australian Government in December 2016 that the Government would commence a conversation about treaty with Aboriginal people, a Treaty Commissioner has been appointed and has begun a series of talks with Aboriginal people across the state.

Dr Roger Thomas, a Kokatha, Mirning man, and an experienced educator and leader, has been asked to consult with Aboriginal people on a suitable framework for what could be considered in a treaty.

Commissioner Thomas has also been asked to provide advice to the Minister for Aboriginal Affairs on the treaty making process between the government and Aboriginal people.

Shortly after commencing the role, the Commissioner attended a meeting of statewide representatives of native title groups in Port Augusta. He provided details of the task the government had set him, and asked those present to start to think about some of the key questions about treaty.

He wants people to consider as a starting point the purpose of treaty, the key principles that should be included in treaty,

who would be represented in a treaty, including who would be recognised as the Aboriginal representatives to a treaty and how a treaty could be structured.

The Commissioner told the peak group of native title groups and *Aboriginal Way* that the Government had commenced the engagement with a blank sheet and not having a preconceived or preferred model for what could be in a treaty.

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# SA Treaty talks underway



Above: Treaty Commissioner addressing statewide representatives from native title groups at meeting in Port Augusta in March.

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“The brief that has been given to me does not come with a pre-conceived view, model or a position in terms of what a treaty model might look like, who the treaty should be with and any of the other elements that could form a treaty,” Dr Thomas said.

“The government have made it clear to me through the Minister that this is a priority for the Aboriginal community to express what they see as being the priorities for what is in a treaty and who that treaty might be between and I can say that quite clearly my role is to go and commence the conversation with Aboriginal people,” he said.

Dr Thomas said that consulting with Aboriginal people in South Australia on treaty was a complex matter.

“Well that’s where it becomes very challenging and also the diversity of it is going to be quite significant,” he said.

“We’ve got a lot of different elements and characteristics to our state, where we have the three landholding bodies, namely Maralinga Tjarutja, APY legislation and also the Aboriginal Lands Trust. We’ve got in the group we were having the conversations with today, the native title groups, so we’ve got over 20 plus native title groups that either have got consent determination already, or they are in the process of an application for native title.

“So we’re going to listen to their views and importantly we’ve got to have regard for all other Aboriginal groups, organisations and individuals from across all of South Australia. This is to ensure that as many Aboriginal people as possible are afforded the same

opportunity to be able to express their views about what they think a treaty is and where they might fit into the treaty process and discussions.

“So it’s going to be very challenging, it’s going to be certainly one that will require us all to come together and to work collaboratively and cooperatively with each other to get the best and the strongest voice about what a treaty might mean for us as Aboriginal people in this state.”

At the meeting, Dr Thomas put several questions to the audience to consider what treaty could be used for.

He said it could be seen as a tool for recognition and reconciliation. It could be a way to reset the relationship between Aboriginal people and the Government and a tool for addressing past wrongs.

“It’s about putting everything on the table and making sure our voice is heard,” Dr Thomas said.

One of the first questions put to Dr Thomas by native title representatives was whether treaty would be embedded into the South Australian constitution.

Dr Thomas responded that “if we as Aboriginal people want to present that view in our submissions, then that’s what goes forward. If it goes legislatively or constitutionally, that’s what we have to discuss during the engagement sessions,” he said.

One Native Title representative asked for clarification on the role of Regional Authorities in this treaty making process. The government stated on announcing the treaty that the newly formed Regional Authorities would be the first place that discussions would start.

In response to discussion about Regional Authorities, Dr Thomas said:

“The government has done some important work on resetting the relationship between Aboriginal people and the government through the Regional Authorities and they are one of the groups I need to speak to in this consultation on treaty.”

One representative said that it is important to have an understanding of the legislative frameworks that exist and how that has had an impact on all of those policies and changes and amendments to relevant laws over the last hundred years.

“Because while it’s fine to say that these things are on the table and we’ve got to go and do that, but there are certain legislation that stops us from doing certain things so how do we be able to put ourselves in a position to be able to reshape that and change that?” they said.

The statewide representatives of native title groups expressed concern over the timeline given to Dr Thomas, and SA Native Title Services has written a letter on behalf of that forum sharing this concern with the Minister.

Dr Thomas himself agreed that the timeline is looking difficult.

“They have provided me with I suppose an indicative timeframe and that timeframe is to look at having draft legislation for the current government to have in both houses of parliament by the winter sitting of this year.

“Now that obviously is becoming quite I suppose challenging to achieve, given the diversity of our communities. So there may well have to be a case that

involves me putting to the Minister about the time frame issues. Look that aspiration was one that was clearly an unrealistic one, or one that didn’t have the full regard for the extent and the diversity, and more importantly I think the respect that we have to afford to the Aboriginal community, to be able to go away and think about it, to be able to caucus amongst their communities and their groups. And that’s where I suppose it’s my job as Commissioner is to put that case to the Minister and renegotiate what timeframes they are expecting to ensure that we get the best result here, rather than one that’s going to be rushed. I’m not saying that as a criticism of government, but I’m just saying that they were quite keen to get something immediately so that we could at least get it on the table and get it moving, and I think now it’s probably going to be needing just to be extended a little bit more. So that’s my impression at this stage,” said Dr Thomas.

As the result of different representations to the Minister about the concerns about the very short time frames, including the Commissioner raising those concerns directly with him, the Minister for Aboriginal Affairs has agreed to extend the due date for the Commissioner’s report on a proposed Framework for a treaty until the end of July 2017.

Engagement with Aboriginal people by the office of the Treaty Commissioner continues.

**More information on SA Treaty and the Commissioner:**

<http://www.statedevelopment.sa.gov.au/treaty>

**Written feedback welcome:**  
[treaties@sa.gov.au](mailto:treaties@sa.gov.au)

# Native title holders continue work to re-establish a statewide voice

**Representatives from native title groups across South Australia met in Port Augusta in March to discuss issues of common concern, including treaty and to further progress the establishment of a new representative organisation.**

The CEO of SA Native Title Services, Mr Keith Thomas, invited all native title groups in the state to send representatives to the meeting.

Details of the proposed statewide body, including objectives, membership and board make-up were discussed. A working group is now tasked with taking those decisions to the next step towards registration.

Other issues discussed over the weekend included an update on the Aboriginal Heritage Regulations and Guidelines, the Native Title (ILUA) Amendment Bill and the Mining Act changes.

As also reported in *Aboriginal Way*, a large part of the meeting was taken up with hearing from the new Commissioner for Treaty Dr Roger Thomas and considering key questions for the upcoming treaty discussions.

Native title representatives agreed they would take those discussions back to their own communities and took the opportunity to connect with the treaty office staff.



Top: Sign of the times! Above: Statewide native title representatives at meeting in Port Augusta in March.

## Amendments to Racial Discrimination Act

**An amendment to the Racial Discrimination Act has been rejected by the Federal Parliament, but the long debate has increased the acceptability of racism in Australia and damaged trust between the Indigenous community and the Prime Minister, according to one commentator.**

A bid by the Federal Government to amend section 18C of the Racial Discrimination Act and make it lawful to offend, insult and intimidate others on the basis of race was voted down in the Senate in March after an extended debate, including a rushed and controversial Senate inquiry.

Luke Pearson, the founder of IndigenousX social media platform, said in an opinion piece during the debate that damage would be caused whichever way the final vote went.

“Even though the changes to 18C will likely not make it through parliament, Turnbull’s support for them has guaranteed an upsurge in the already horrific levels of racism many of us experience on a daily basis. And when the changes eventually fail, this too will embolden racists to exercise their ‘rights to be bigots,’” Mr Pearson said.

The Government’s amendments were voted down by Labor, the Greens and some crossbenchers, including

Nick Xenophon and the Tasmanian Independent Jacqui Lambie.

Labor Senator Pat Dodson said during the debate that “the changes to 18C of the Racial Discrimination Act 1975 proposed by this government weaken the protections for Australians against racial hate speech and racial discrimination”.

Senator Dodson was also present at the Senate Inquiry into the amendments, when the chairman of the inquiry, Liberal Senator Ian Macdonald refused to allow an Aboriginal Legal Service to present on the legislation.

Attorney-General George Brandis described the defeat of the legislation as a ‘sad day’. Coalition MPs had supported

the legislation on the basis that it enabled free speech and that it did not remove protection from racist speech, but altered the test to a more reasonable level.

“This is not primarily a debate about race. It is a debate about free speech,” Senator Brandis said. “Not a single country in the entire world has a section 18C.”

The Government was successful in passing another aspect of the legislation changes – procedural changes to how the Australian Human Rights Commission handles cases, which make it easier to dismiss vexatious complaints and require greater transparency for defendants.

**Further information is available at:** <http://indigenousx.com.au/>

# Apologies and denial

**While it is nine years since Prime Minister Kevin Rudd presented a national apology to the Stolen Generation, some Australian community members remain sceptical about the reality of this part of our shared history.**

That was a harsh fact faced by over one thousand people who came together at the Adelaide Convention Centre on 13 February to mark the anniversary of the National Apology.

The Reconciliation South Australia event was addressed by Stolen Generations survivors, who spoke of their experiences and shared their feelings about those who refused to listen and learn from their stories.

Kinchela Home boys Uncle Richard Campbell and Uncle Roger Jarratt and Cootamundra home girl Auntie Wilma Moran are Stolen Generations survivors who were involved in the SBS TV series *First Contact*. Excerpts from the program were shown at the breakfast.

The TV show featured well known non-Indigenous Australians learning about the Stolen Generations from survivors themselves. Politician David Oldfield was one of those prominent Australians and he seemed reluctant to accept what he heard from the survivors.

In comments made of the program he seemed to reject the idea that the

experience of the people he spoke to amounted to a systematic racism, which was inflicted particularly on Aboriginal families.

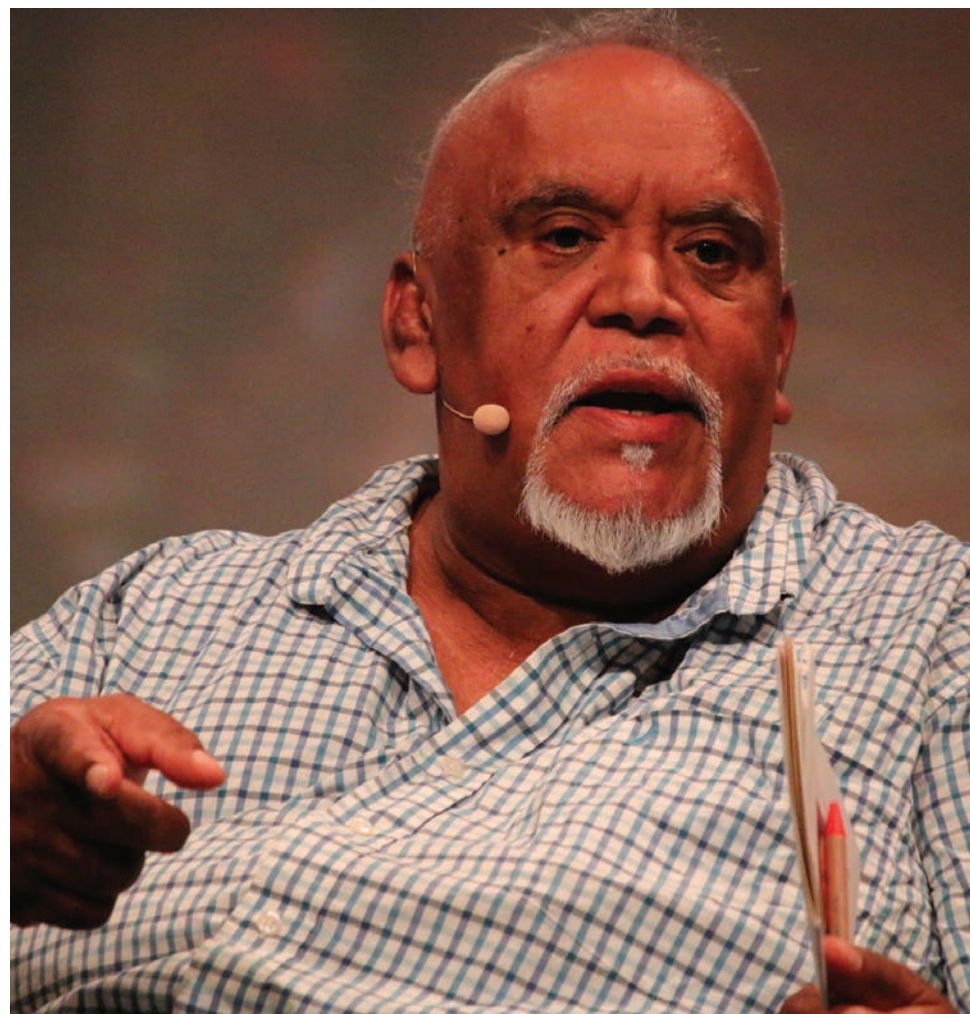
Reconciliation SA Co-chair Professor Peter Buckskin asked Uncle Richard Campbell what it was like to have his experience denied on the TV program.

"It wasn't good, especially David Oldfield. That's what we've got to deal with in Australia itself, just actually saying that we weren't stolen children we were rescued children. But how do you rescue children that you have to be putting in an institution like that?" he asked.

Mr Campbell said that the other celebrities on the program, including singer-songwriter Natalie Imbruglia; TV celebrity and former music industry executive Ian 'Dicko' Dickson and comedian and radio presenter Tom Ballard were willing to listen and learn.

Professor Buckskin asked Mr Campbell if he saw discussions like he had had on the program as a part of his healing, and he responded that this particular experience had helped the Kinchela Boy's home children re-unite.

"I've only been back together with the boys in the last three to four years, and before that I suppose I was still in the wilderness, but once I got back I felt a real brotherly love again. Because we



actually had to make a family again, because we was taken away from family. And through this experience it actually brought us back together. And that healing, every time we get together we heal together, just talking about the situation," he said.

He said that the boys in the home became his family because he had left his family behind, so who he grew up with became his family. He had lost his identity and language.

"As soon as you walk in the gate, they hit you in the back of the head and they say:

*"You're not Richard Campbell, you're number 28."*

*"You're not black, you're white."*

*"You're not Aboriginal, you've got no spirituality, you've got no family, they're all dead."*

Local woman Jenny Caruso told the audience at the event that she was



Top: Uncle Richard Campbell. Above: Professor Peter Buckskin addresses Reconciliation SA event at Adelaide Convention Centre in February, marking the anniversary of the National Apology.



removed from her family in the Northern Territory in the 1950s.

“As were many of the children in the Northern Territory and there was legislative alliances between the NT and SA in relation to the removal and placement of what were deemed to be half-caste children,” she explained.

Ms Caruso spoke about the impact that the language of that time, including the term ‘half-caste’ had on identity.



**Audience members at the event spoke to *Aboriginal Way* about how the Apology Breakfast and discussions of denial made them feel:**

*“It’s given me the opportunity to connect with my community and to share in their healing.”*

*“Well I think it makes me feel really sad that perhaps people can not see, or are using terminology in policies, to explain away their racism.”*

*“It’s wonderful to be here and support such a significant event – nine years since the apology. For our survivors it’s important that we recognise and support the ongoing healing for them, their families and our communities.”*

*“It would be a wonderful thing to see we all recognise the pains of the past, so we can all heal as a country and move forward in the future. But we can’t move forward without recognising our past.”*

*“I think it’s disgusting, but the thing is they are ignorant and you’ll never educate ignorant people because they are too closed minded to want to know what actually happened, because there’s no willingness to open their mind.”*

*“I just think they’re all so brave, you know they’ve got no anger and they really should have a lot of anger, it’s just disgusting, there’s no reason to be taken out of their homes, and they’ll never get that back.”*

*“I really enjoyed the event, I would like to hear more of the history of the stolen generation, I think it’s like a lot of things in the past, we tend to lose contact with them, once those people disappear from in front of us. It’s a bit like cultures and languages, once they’ve gone they’ve gone and I think it’s something we should never forget.”*

*“Really proud and good. And a lot of people would have heard stories that they haven’t heard before and that’s good because if we learn about each other that improves communication and gives greater understanding and we can come together as one.”*

*“It’s always very powerful, the recognition and just getting together to see the survival and the strength of the people. And the rest of Adelaide society getting together and supporting is really a very powerful thing to have.”*



Photos by Patrick Ferguson, Reconciliation SA.

“We come to live that term because we are taught to live that term. My aunts who are here from Croker Island, not only are they my Aunts, they are my family, they are my role models and they are my mentors. But if you have a look at us and you line us up against other mobs of people, which is what was done and the differentiation was made on our skin tone, and our facial features as well, and so they were the determinants,” she said.

“They were determined by social science, they were determined by anthropologists, and the government took that on. As did the social scientists, they made up the words and then they said ‘this is the truth’ and they built a propaganda around it. A propaganda that affected every single Aboriginal person in the country,” said Ms Caruso.

She said that arguments saying the removal of children from their families wasn’t a race based policy, or that it was

only done to provide care for children, did not stand up.

“People say it wasn’t about race. So you can say, ok it wasn’t about race – it was about skin colour. So if it was about skin colour it was about race. So it’s a very short argument. And they say it was about care, it was about care and there were no policies. To say there were no policies is to be unread. To say there were no policies is to show to what extent you have chosen not to expand your education and your own self-knowledge. And if you are a person in a position of power who has chosen to do that, you have no right to be in that position of power,” she said.

Top: Apology Day breakfast panel, left to right, Jenny Caruso, Roger Jarratt, Wilma Moran, Richard Campbell and Peter Buckskin. Above left: Jenny Caruso addresses audience. Above right: Stolen Generations survivors light candles at the Apology Day breakfast.

# Uncle Roger Jarratt shares his story

**Well when I was 11 years old they come to the mission, like a big black car pulled up, and the sergeant from Bowraville Mission got out with the welfare man dragged us out kicking and screaming and put us in a car.**

And then the next thing I know we were walking through these gates at Kinchela Boys home and then they took us down to this room where they give you your bundle with your number on it and took all our clothes and burnt them in the incinerator. And I had shoes when I went to Kinchela, but they never issue any shoes at all while you're there. The only shoes they gave you was when you were at the high school.

So they burnt all the clothes, they give me a big boys clothes and they were second hand and they were all cotton, cotton jumper, cotton t shirt, everything was cotton. And they shaved my hair bald with me other brother Philip as well and they took us down to the shower block, they gave us a big scrubbing brush and we had to scrub ourselves in this shower, cold. Then they threw this white powder over us and then gave us some clothes to put back on. By that time it was tea time and they took us in to this big room where all the other brothers now I know, where sitting down having their tea. And you know I just couldn't eat that day, just couldn't eat.

I was put in a big boys dormitory, my other brother was put in a little boys dormitory, and you had a bed, two sheets, one blanket, like it was a woollen blanket and that was it, like you were cold, it didn't matter you had to cuddle up and...

I cried every night, because I was taken there, I didn't know what I had done wrong, through my life I'd heard that bad people are taken and put in jail, and this place was like jail, it was worse than jail it was like hell. And I cried every night, not so the other boys and the staff didn't see you.

And of a daytime they gave you a duty what to do and you had to do it perfect, otherwise they'd belt you all the time.

I was born in 1947, we weren't allowed in hospitals because we were Aboriginal we were passed as fauna, animals, I was born with my feet turned in crooked and when I was four years old they took me to Sydney and I had an operation on them and I walked around with braces on for about 12 months, and ever since that time I walked funny. And staff used to come up and bash me on the head and belt me with a stick because I wasn't walking properly.

They were vicious and cruel and the food that was there was put in a galvanised garbage bin they had back in those days and the weevils got into all the pastas, and the Weet Bix and porridge and everything full of weevils and they'd dish it up to you and if you didn't eat it you had to eat it next time you had a meal until

you actually ate it. So you'd be picking weevils out before you had your food.

And then they'd as you got older they sent you over the back to milk the cows on the weekend because the big boys had the weekend off, and they got you up a four o'clock in the morning it was dark and you had a little lamp, a little kerosene lamp and you had to walk down and the cattle were still lying down it was still dark at four in the morning and you'd be tripping over them and you had no shoes so your feet and legs and everything would crack with frost it was that cold and in your hands and that.

And you'd bring the cattle back up and where they'd actually drop their business, you'd put your feet in to keep warm. You know gumboots would have been magic but they never gave any shoes, the only shoes they gave you was when you went to high school and every afternoon when you come home, like when you went to go to high school it was a relief because you were getting out of that jail, you felt real good because you were going up and you weren't being pushed around and bashed any more.

All the time I was in Kinchela you see the boys that were actually molested, my second oldest brother Kerry, he was molested, and they walk around with their heads down, and for their dignity, you didn't go up and ask them what happened, because you knew what happened. God almighty, it was unreal.

I was that depressed I couldn't learn nothing, as they say I was dumb in that way, I was in the class at 2G at high school, like that's the lowest anybody can go. And when I was 14, the manager pulled me out because I couldn't do any better, and I was brought back and put on work duty until some of the boys actually ran away. Because I settled down, a job came washing dishes at a hostel, that was my first job, washing dishes and making toast and that and eventually I played football at a club where I met my wife and this year we've been married 51 years, I'm really grateful, you know, that she supported me all this time.

When I was taken I was 11 years old, and I was in the process of learning things to be initiated. Like that when the tea tree used to flower, you couldn't catch the brim because the brim had fish roes inside, so any other species you could catch you could eat, and if another tree species flowered with different other fish, you'd learn not to when they flower not to actually take the fish so you are actually farming your fish as well, not eating them out so you're going to starve so I was going to be initiated.

But as I said they come and grabbed me and I ended up at Kinchela and I lost all my culture, all identity is totally stripped away and when I go back to see my family, I know they are my brothers and sisters, but I just there's something



missing there for this love. I don't know what love is, I've been looking for it all my life since I came out of Kinchela but it's like in Kinchela with the boys, that's my second family. I lost my original family, and we were like little monkeys in their hot bath, all huddling together. That's all we had to do, was support each other and we became very strong together and its really good that we got back together now, it gives us something positive.

If you go right back to the day dot when the convicts first come here we were put in a situation we couldn't get out hunting and gathering because they put fences up and said keep off my land black fella, they'd shoot you. So they'd put you on missions and give you rations and the rations were to buy sugar, flour and tea. You weren't allowed to get any meat, or anything and because you couldn't go out and hunt to get the meat you'd sit down the river and fish, but the thing is when they take everything away from you and then they come back and say you are a neglected child, the truth is we were neglected by the government that made these policies and they made our parents look really bad, I feel honestly my mum's passed now, but the amount of pain she had gone through, I feel really sorry that

she's... She's probably looking down and seeing what's going on now, and I hope she is, and you know realise that things are starting to change.

We were actually, she signed a letter saying that we were only taken for 12 months while she go, she was sick, and we were supposed to come back 12 months later, my sisters were taken up to Cowper which is up near Grafton to a Catholic Institution and they come back 12 months, but the one time mum came down to Kinchela you know I thought the time was up, then me and my other two brothers raced up to the gate and said "oh good god we're going home, get me out of this hell" and when we got up mum had some biscuits and cordial and we had a drink with her.

At the end of the time mum went back to the gates, we were still locked in there. And I regret to this day I said to Mum "please don't come back, you're hurting me and you're hurting yourself" so I've regretted that all my life.

**Uncle Roger Jarratt, Kinchela Boy number 12 as he describes himself, was a speaker at Reconciliation SA's 2017 National Apology Day breakfast in February.**

# 25 years of native title

**This year marks 25 years since the historic Mabo case in which the High Court recognised Aboriginal and Torres Strait Islander's traditional ownership to country and native title was born.**

In 1993, the Keating Government prepared and introduced legislation, the Native Title Bill 1993, in response to the Mabo decision.

According to the National Native Title Tribunal 25 years website, 'There was strong opposition to the proposed legislation by the mining and pastoral industries and the debate was fierce and intense, receiving much media attention'.

After a lengthy and complex consultation process, the Bill passed through both houses of Parliament, passing through the Senate on 21 December 1993, and receiving royal assent on 24 December 1993. The Native Title Act (Cth) commenced operation on 1 January 1994.

Since then, native title lawyers and anthropologists along with other stakeholders have worked with traditional owners across the country to file native title claims and eventually have their native title rights recognised by the Federal Court of Australia.

To date there have been over 370 native title determinations and over 31 percent of Australia's landmass has been determined by the federal court to have some existing native title rights. Over 11 percent have exclusive native title rights.

Raelene Webb QC, President of the National Native Title Tribunal said native title management is now a strong focus of native title groups and services.

"Native title is now evolving into a post determined world with an energetic focus on the management of native title and the operation of Prescribed Body Corporates (Aboriginal native title corporations)," said Ms Webb.

Glen Kelly, Native Title Council CEO stated that we are now working towards a society where Aboriginal people contribute more profoundly to our political system.

"I think the negotiation people have been engaged in have loosened up the political system in Australia... Native Title has brought on conversation to allow us to break through more barriers and in my view we want to be a more inclusive society where Aboriginal people are prosperous where peoples culture and connection to country is secure," he said.

Keith Thomas, South Australia Native Title Services CEO said native title has come a long way in the last 25 years and it continues to create opportunities for Aboriginal people.

"In South Australia, perhaps more than any other jurisdiction, there has been

a commitment to resolve native title through negotiation and consent rather than litigation. To date, approximately 56 percent of the State is subject to determined native title and of the 26 determinations of claimant applications, 24 have been made by consent.

"Importantly native title has given recognition to traditional owners and opportunity to rebuild their nations. Some claims have taken close to 20 years to be determined and others are still waiting for their recognition. What we can do now is assist to create opportunities for groups and help them become sustainable," said Mr Thomas.

At the National Native Title Conference last year, Melissa George, Wulgurukaba Traditional Owner and the CEO of North Australian Indigenous Land and Sea Management Alliance Ltd (NAISMA) presented the annual Mabo Lecture.

In terms of how far we have come, Ms George said we are still struggling with the same issues we were over 20 years ago, that is "the rights as citizens, recognition and achievement through self determination, ability to exercise our rights and to share equitably in the provision of government programs and services protection of our cultural integrity and heritage, and increasing participation in Australia's economic life".

Ms George said for her it is still the question of 'what have we got?'

"It is about ensuring that the role of Aboriginal and Torres Strait Islander land and sea managers – the doers – is recognised, supported and valued. Now let's face it, this is not an easy task and it is an issue that is multifaceted in its application. Looking after Country is not just about protecting and managing plants and animals or working with weeds and feral animals. It's also, and more importantly, about people. People's ability to keep their culture strong, derive an income from their country, which would create opportunities for their children, and, within all of this, developing the capability of their community organisations to enable them to facilitate strategic long-term outcomes.

"In essence it is about reclaiming our sovereignty; the capacity for Aboriginal and Torres Strait people to live on our traditional country on our terms and not at the behest of government," said Ms George.

Mr Graham Neate, a leading contributor to Indigenous land rights, said "the law has been clarified and we have much more certainty about where native title exists and where it won't be recognised.

"For some groups and only some groups this has led to significant commercial and financial income... they and their children and their grandchildren and beyond will benefit because of negotiated outcomes," he said.

## What is native title?

Native title is the recognition in Australian law that Aboriginal people continue to hold rights to their land and waters, which come from their traditional laws and customs. Those laws and customs must have been acknowledged and observed in a substantially uninterrupted way from the time of settlement until now – National Native Title Tribunal.

## Native Title Act 1993 – Sect 223

### Native title: Common law rights and interests

- (1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
  - (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
  - (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
  - (c) the rights and interests are recognised by the common law of Australia.

### The purpose of the Act is to:

- (a) rectify the consequences of past injustices by the special measures contained in this Act, announced at the time of introduction of this Act into the Parliament, or agreed on by the Parliament from time to time, for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and
- (b) ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire. To achieve native title the following conditions must be met:
  - the rights and interests are possessed under the traditional laws currently acknowledged and the traditional customs currently observed by the relevant Indigenous people;
  - those Indigenous people have a 'connection' with the area in question by those traditional laws and customs; and
  - the rights and interests are recognised by the common law of Australia.

## What is the Native Title Act?

The Native Title Act was first introduced Australian Law in 1993. The Law came after the High Court recognised the land rights of the Meriam people, the traditional owners of the Murray Islands (which include the islands of Mer, Dauer and Waier) in the Torres Strait.

The decision changed the Australian legal system's idea that sovereignty meant the Crown-owned all land in the new colony and it recognised the rights and historical connection that Aboriginal and Torres Strait Islander People have to the land.

The Native Title Act 1993 (NTA) established the procedure for making native title claims. The Act has been amended on several occasions, including 1998, 2007 and 2009.

## What is the Mabo decision?

This first successful claim for native title was led by Eddie Koiki Mabo. It has become known as the historic Mabo decision.

Legal proceedings for the case began on 20 May 1982, when a group of Meriam men, Eddie Koiki Mabo, Reverend David Passi, Celuia Mapoo Salee, Sam Passi and James Rice, brought an action against the State of Queensland and the Commonwealth of Australia, in the High Court, claiming 'native title' to the Murray Islands (AIATSIS, 2016).

The Mabo case ran for 10 years. On 3 June 1992, the High Court of Australia decided that terra nullius (nobody's land) should not have been applied to Australia. This decision recognised that Aboriginal and Torres Strait Islander peoples have rights to the land – rights that existed before the British arrived and can still exist today.

The Mabo decision was a turning point for the recognition of Aboriginal and Torres Strait Islander peoples' rights, because it acknowledged their unique connection with the land. It also led to the Australian Parliament passing the Native Title Act in 1993.

Sadly, Eddie Mabo never found out the result of his legal case. He died in January 1992, just five months before the High Court made its decision (Reconciliation Australia, 2016).

The National Native Title Tribunal launched a special website dedicated to celebrating the achievements of native title and recognising the challenges of native title over the past 25 years.

**Videos, photos and information on the history of native title are now available on the Native Title Tribunal 25 Years of Native Title Recognition website: [www.nativetitle25.gov.au](http://www.nativetitle25.gov.au)**

# Native Title Act changes before Federal Parliament

**Federal Parliament is considering changes to the Native Title Act after a decision of the Federal Court put Indigenous Land Use Agreements (ILUAs) into question.**

The Federal Government introduced the amendments to the Act after the McGlade decision, a ruling by the full bench of the Federal Court in February 2017 that all members comprising the Applicant must sign the ILUA for it to be valid. The ruling was made in response to a challenge by four Noongar people in regard to an ILUA over a large area of south-west Western Australia.

The court found the Native Title Registrar does not have the jurisdiction to register an ILUA unless it is signed by all registered Native Title Claimants who are 'named applicants'.

The decision has overturned a legal precedent set in 2010 that formed the basis for ILUAs across the country. Under the 2010 ruling, an ILUA did not need to be signed by all members of the applicant, only a majority so long as the claim group voted in support.

The Federal Court decision appears to put around 150 ILUAs into question, including at least two in South Australia.

The amendments to the Native Title Act proposed by the Federal Government would return the requirement for a majority of named applicants in a community to be able to endorse an ILUA.

The CEO of the National Native Title Council Glen Kelly told the ABC that the legislation must be passed to safeguard Aboriginal people's rights.

"The judgement a couple of weeks ago in the Federal Court has invalidated almost 150 ILUAs," he said in February.

"Now, a lot of these ILUAs have really very significant benefits packages which have been negotiated by traditional owners."

Keith Thomas, CEO of SA Native Title Services (SANTS), also supported the passage of the amendments through Parliament.

"This legislation is important to restore certainty for those parties who have entered into ILUAs," said Mr Thomas.

"At least two agreements in South Australia may be invalid as a result of the recent decision of the Federal Court. These agreements were duly authorised by the members of the native title

claim group and executed in a manner consistent with the law at the time.

"The amendments are important in confirming the validity of these agreements and more broadly in protecting the decision-making authority of the members of the native title group to enter or not enter into an agreement. Such decisions and powers should not rest with a few.

"While the Native Title Act is complex, the principle here is clear in that the decision-making authority of the native title group rests with the community, not individuals," said Mr Thomas.

The amendments to the Native Title Act were put before the Federal Parliament in its final sitting in March 2017, but were not passed before the break.

## New approach to Aboriginal engagement at UniSA

**The University of South Australia can learn from its Indigenous staff and students and the wider Aboriginal community, according to its new leader in Aboriginal engagement.**

Tanganekald, Meintangk-Bungantij woman, solicitor, representative for First Nations Peoples at the United Nations and Researcher, Professor Irene Watson is the new Pro Vice Chancellor (PVC) for Aboriginal Leadership and Strategy and Unaipon Chair at the University of South Australia.

She believes that in looking for the strengths of Aboriginal people, the University can grow and learn.

"One of my objectives is what I'd call two-way seeing and knowing and the challenge is to positively bring that across the entire university in its approach to the inclusivity of Aboriginal peoples," Professor Watson told *Aboriginal Way*.

"So that is not so much from an assimilationist perspective, where Aboriginal people come into tertiary education and leave their Aboriginal self behind, and you know adopt all of the western paradigms and ways of knowing, but to meet somewhere on that path and to think about how we might co-create and build this idea of two ways of seeing and knowing," she said.

Aboriginal culture can offer many strengths to the University according to Professor Watson.

"We develop this understanding that whilst very often the narrative of Aboriginality is a deficit one, of disadvantage, and there is a lot of inequity, but that isn't who we are, you know we're not disadvantaged people, we're also peoples with an ancient history, ancient knowledge systems," she said.



Professor Watson (pictured above) has combined her interests in Indigenous knowledges and law in her research across a long and distinguished career. She has recently published two books *Aboriginal Peoples, Colonialism and International Law* and *Indigenous People as Subjects in International Law*. That work is relevant to her new role as she explained.

"So I guess the research space I come from is tracking into the PVC role and anticipating that we can grow up the space in a greater appreciation of the positives that an Indigenous engagement brings. That it's also an engagement with the Aboriginal world and all of the diversity that that brings, and that so there's a reciprocity of a two-way engagement. We're engaging with the university, but the university is also engaging with diverse, distinct Aboriginal nations, first peoples into this university space," said Professor Watson.

Professor Watson's new role looks at the position of all Aboriginal people at UniSA. That includes student engagement and the employment of Aboriginal people across the University. She has responsibility to build an Indigenous research strategy and also to look at the Indigenous content in undergraduate degree programs.

The position was created after the closure of the David Unaipon College of Indigenous Education. Professor Watson explained how this new approach to Indigenous engagement differs.

"The David Unaipon College of Indigenous Education and Research was a centre which housed the student support program and also a number of other programs, teaching programs, as well as a research centre. So the College was specific to those three areas of education and research and student support," said Professor Watson.

"The PVC role will pick up on all of those roles as well but is also across the entire University. So whilst the Unaipon College is no more, I see the possibility of an opening that is across the University as in fact being more expansive," she said.

Professor Watson has long been a role model and advocate for Aboriginal people participating in higher education and says that practical programs are making a difference.

"Well I think by building on the engagement and creating opportunities for First Nations to enter university, for example, in terms of building a pipeline which is currently happening with the University of South Australia, it has a program called AIME, which is a national mentoring program where UniSA students are matched with Aboriginal high school students," Professor Watson said.

"With that program there is a really positive engagement between UniSA and the Aboriginal community, with the idea of building that pipeline and connection between the university and the community at large and the possibility and opportunities for young Aboriginal people who might otherwise not have seen that there was a possibility for them to enter university.

Not only to enter university, but to enter into programs and be successful graduates of UniSA," she said.

As South Australia's first Aboriginal lawyer, Professor Watson has a particular interest in encouraging Aboriginal people to consider studying the law. She believes that the historic position of Aboriginal peoples in the foundation of this country continues to raise critical questions of human rights and international law.

"The business remains unfinished and I think that there's an ongoing need for first nations lawyers to be strong advocates in this area. I can't see a resolution for many of the issues that we confront in the near future. So as advocates, for their communities, there will remain a strong need for that," she said.

"Social inequities that Aboriginal people face due to that historical position also mean that Indigenous legal voices are important," she explained.

"There's the social justice issues that many of our communities face in terms of high incarceration, so also we'll continue to need strong Indigenous advocacy for some time to come," said Professor Watson.

"But just in general, it's an area where it's empowering for Indigenous individuals and their communities to understand how the Australian legal system works and how they can become skilled in this area and become strong advocates for their communities, I think that will continue to stand as an ongoing need for some generations, or decades to come," said Professor Watson.

**Professor Irene Watson's home page at the University of South Australia: <http://people.unisa.edu.au/Irene.Watson>**



# Survival Day, a day worth recognising?



## The debate continues each year about what 26 January represents in Australia and 2017 was no different.

This year's public discourse was kicked off by the customary 'lamb ad' which polarised public opinion with its positive spin on Australia's history.

Many celebrate Australia Day as a way to mark the survival of Indigenous Australians and their cultures, despite the injustices they have faced since the arrival of the first fleet in 1788.

NITV reported that Survival Day events are well established across the country after being launched by Aboriginal communities in Sydney in 2012.

However, according to *Creative Spirits* web forum, many Australians believe Australia Day is no longer an appropriate day for celebrations and call for a new day which includes all Australians.

This year, Twitter reported **#changethedate** grew by 1200 percent.

The idea of changing the date to May 8 – 'mate' was circulated this year with many responding positively to the date change and the wordplay.

The annual Survival Day event at Semaphore foreshore attracted Aboriginal and

non-Aboriginal people to celebrate and recognise survival of Aboriginal culture.

*Aboriginal Message* spoke to attendees at the event to get their view of whether the 26 January is a date worth recognising.

Laura said "I think for a lot of the country having an Australia Day is important but I think it is more important to remember that the 26 of January was the date of the invasion of Australia, perhaps May 8 would be a good day for it instead".

Kim Wanganeen said moving the date is a step towards reconciliation.

"I think moving the date is an important thing to do because for me Australia Day represents dispossession and disempowerment. This day is also about recognising resilience and community and I think you cannot move forward unless you address the past but because of what Australia Day means, I think moving the date is important for reconciliation," he said.

Uncle Frank Nam said that Survival Day was about coming together and feeling a sense of belonging with your friends and family.

"It's great to have a day where you can feel comfortable, because for a long time you don't feel comfortable in the community. It's getting better but not to the extreme that you think it should be

and it's important to be here and enjoy the day," said Uncle Frank.

The Survival Day event included music, dance and bush tucker. Many services set up stalls to provide information to community on the day. The family event is growing each year and attracting a diverse audience.

Host, Natasha Wanganeen said it was a great turn out this year and the day is about Indigenous and non-Indigenous people coming together.

"I absolutely love the Survival Day event, it's my favourite time of year except for Spirit Festival. It's an opportunity to stand up and stand strong with the rest of your community.

"The weather, the heat is why I kept moving, because I didn't want to get sunburnt. Moving through the crowd you know, going from one side to another just letting everybody know that they are all a part of it. I think it's important for the performers and the organisers to hear the voices of the public that come along and get their opinion about what the day means to them, whether they're Indigenous or not, I think its very important to understand each other," she said.

Despite views that the date should be changed, Survival Day is a success story

showing how community can come together to celebrate resilience and reconciliation.

In January, Deputy Prime Minister Barnaby Joyce made his stance on Australia Day very clear by criticising those wanting to change the date, labelling them 'miserable gutted' and arguing it was 'political correctness gone mad'. Prime Minister Malcolm Turnbull also expressed the idea of date change to be out of the question.

If the politicians are unwilling to budge, it seems unlikely May 8 or any other date will be crowned Australia Day any time soon. Next year, the public debate will continue to simmer, another 'lamb ad' will circulate our screens, and people across the country will remain devoted to celebrating 26 January, whatever it means to them.

*Aboriginal Way* acknowledges with sadness the passing of Mr Raymond Agius, pictured on our cover. We send our sincere condolences to his family and thank them for permission to print Mr Agius' image.

Clockwise from top left: Host Natasha Wanganeen; The audience at the Semaphore Foreshore; Major Summer with the Tal-Kin-Jeri Dance Group; Flag painting at the Reconciliation SA stall; Families come together at Survival Day 2017.

# Ken Wyatt: Australia's first Aboriginal Federal Minister

**Australia has its first Indigenous Federal Minister after Ken Wyatt was appointed to the position of Minister for Aged Care and Indigenous Health in January 2017.**

Mr Wyatt was elevated to the Ministry following a cabinet reshuffle resulting from the resignation of the Health Minister Sussan Ley. He is a member of the Liberal Party of Australia and the member for Hasluck, an area on the outskirts of Perth.

The current Federal Parliament now includes five Indigenous parliamentarians – Mr Wyatt and Linda Burney hold seats in the House of Representatives, while the Senate includes Pat Dodson, Jacqui Lambie, and Malarndirri McCarthy.

A Noongar Yamatji man, Mr Wyatt was born in Bunbury in Western Australia. The son of a railway granger and a domestic worker, he was the eldest of ten. His mother grew up on the Roelands Mission.

After Ken was born the family moved to Nannine, then to Corrigin where he went to school. He completed his the last two years of high school in Perth.

He trained as a teacher then moved into Indigenous health policy. Before entering politics, Mr Wyatt was the Director of Aboriginal Health within both the NSW and West Australian health departments.

Mr Wyatt told NITV that he was inspired by Australia's very first Aboriginal Federal politician, the late Queensland Senator, Neville Bonner. However, his experience made Mr Wyatt wary.

"I watched Neville's career and I got to know Neville and he was just an incredibly gentle man within the work that he did. I asked him about some of the challenges and he experienced some incredible challenges whilst he worked in the Parliament. And that's why I thought I'd never go into politics" said Mr Wyatt.

Asked by the ABC's Stan Grant about the challenges ahead in his portfolio of Indigenous Health, Mr Wyatt said that responsibility for improving Aboriginal people's health needed to be accepted right across the health system.

"I believe we've got to look at how the whole health sector throws its weight behind the health of Aboriginal people," he said.

"Now we talk about Aboriginal Health and there is this construct behind Aboriginal Health that is based on Aboriginal Community Controlled Health Services (ACCHOs) and community organisations and specific programs that are funded by the Commonwealth.

"If we are truly serious, then what we should be doing is saying 'well alright, how does the health sector, including all the ACCHOs, then tackle the issue to make sure that 800,000 Aboriginal and Torres Strait Islander people in this country have their health conditions improved, the prevalence rates of certain illnesses tackled in a way that sees a reduction?" said Mr Wyatt.

Mr Wyatt is a supporter of constitutional recognition and told the ABC that the national debate on that issue was on track. He said that the move to treaty and constitutional recognition were not in conflict.

"No, they're not because I think the strength is in the constitution because the constitution is the document the high court base their decision around



Ken Wyatt at the Ministerial swearing in ceremony.

when conflicts occur and around which legislation is framed against our founding document," he said

"The issue with treaties is they are a way forward, but they are not set in the foundation of the country's document. I'd rather see recognition first, then treaty.

"I don't think the momentum is being lost because we have a dual conversation occurring now on both concepts and I would certainly hope we don't abandon or set aside our desire to have recognition within the foundation document of this country," said Mr Wyatt.

## Native title groups need recognition under South Australian heritage law

**Native title groups should be recognised under state government legislation as the registered bodies responsible for Aboriginal heritage on their country, according to a recent submission to government by SA Native Title Services (SANTS).**

The *Aboriginal Heritage Act 1988 (SA)* was amended in 2016 and regulations that detail the working of the amended laws were recently opened up for comment by the state government.

Changes to the Aboriginal Heritage Act included the establishment of Recognised Aboriginal Representative Bodies (RARBs), who can negotiate on issues of Aboriginal heritage on their country. The regulations for the amended Act do not mandate that native title holders for an area are appointed as the RARB.

In making comments on the changes, SANTS said that giving authority to body corporates which represent traditional owners is a positive step in engaging the owners of Aboriginal heritage in decision-making in South Australia. Similar arrangements are in place in Queensland and Victoria.

However, the submission said that native title holders, claimants and their corporations must be given precedence to be appointed as RARBs in South Australia. Otherwise there is the potential for conflict between native title decisions and Aboriginal heritage decisions.

The SANTS submission pointed out that the rights and interests recognised under native title are inclusive of Aboriginal heritage.

For example, the first determination in South Australia in *De Rose v State of South Australia* recognised "the right to maintain and protect sites and places of significance to Nguraritja under their traditional laws and customs..."

Each subsequent native title determination made by the Federal Court has similarly recognised the rights of native title holders to look after Aboriginal heritage on their country.

Following these determinations, Prescribed Body Corporates (PBCs) or Registered Native Title Body Corporates (RNTBCs) have been established to hold and manage the respective native title rights and interests. There are now 15 of those corporations in South Australia.

These corporations already provide a sound, regionalised, traditional owner based governance framework that should be recognised in state government heritage policies, the SANTS submission said.

SANTS also recommended that RARBs be properly resourced to undertake their role, and that the Aboriginal Heritage Committee which would oversee the work of the RARBs have increased transparency and review provisions.



SANTS also made comments on the Minister's power to approve agreements under Sections 19M and 19N of the amended act. This change could mean that under certain circumstances it is no longer an offence to damage or disturb Aboriginal Heritage. SANTS recommended that this approval should only happen with the consent of all involved, including the relevant traditional owners.

A key part of the changed legislation was implemented following the passing of the Act through parliament and was not open for comment with the release of the regulations. That amendment was the removal of section 6(2) about Minister being required to hand some of his powers over to traditional owners.

It had been used shortly before the legislation had been passed to overturn the former Aboriginal Affairs Minister Grace Portelezi's decision to authorise a mining company to damage, disturb or interfere with heritage sites, objects or remains on Lake Torrens. Passing the amended Act in state parliament meant that the Minister for Aboriginal Affairs was no longer required to comply with the federal court's ruling to hand powers over to the native title groups in this area.

SANTS will continue to advise native title groups on the changes to the Aboriginal Heritage Act.

The final version of the regulations and guidelines for the Aboriginal Heritage Act will be released by the state government in the near future.

# Nuclear waste in South Australia still on agenda

**Two proposals for nuclear waste storage in South Australia remain on the horizon, with the State Government's proposal in retreat as the Federal Government's plans pick up pace.**

The State Government has recently moved its plans for nuclear waste storage to a 'new phase' of inactivity, while the Federal Government pushes for the identification of a final location for a national nuclear waste facility by the end of 2017.

## Federal Government Proposal

After a nation-wide search, the Federal Government now has only two locations on its list for a nuclear waste facility, and both are in South Australia. The first is near Hawker, the second around the town of Kimba.

Six sites around Australia were originally shortlisted by the federal government to store low and intermediate-level waste.

Wallerberdina station near Barndioota and Hawker in the Flinders Ranges was the only site to reach a formal consultation phase, which remains ongoing.

This was despite the Government reporting opposition from Indigenous stakeholders who were concerned at possible impacts on cultural heritage present at the site. There was also general opposition from a majority of the surrounding landowners who were concerned about impacts to local water supplies and perceived risks to agricultural reputation.

The properties 'Napandee' and 'Lyndhurst' were then voluntarily nominated as possible homes for the waste dump late in the consultation process.

A 90-day public consultation process will be held in the Kimba district after the nominations, with nearby residents set to vote in a postal ballot on whether a radioactive waste dump should be built in their district.

The Federal Government agency responsible for the proposal has established a shopfront in Kimba for community members to ask questions, obtain information and provide feedback about the proposed facility.

The Federal Government wants to make a final decision by the end of the year on

the location for the centre, which will host radioactive waste currently held at sites around Australia.

It has stated that a final national site will only be selected if there is broad community support and it meets Australia's strict environmental and radiation protection regulatory requirements.

**More information available at:**  
<http://www.radioactivewaste.gov.au/>

## State Government Proposal

The Weatherill Government has closed the two key bodies responsible for the debate over the desirability of a domestic and international nuclear waste storage site in the state, after admitting that there is no political consensus that would support the plan.

The Consultation and Response Agency (CARA), which delivered the engagement program on the nuclear proposal, and the CARA Advisory Board, which provided advice to CARA were closed by the Government on 31 March 2017.

The Government has reported that The Department of State Development will take responsibility for the new phase of the nuclear discussion. That phase "will focus on supporting a community-led discussion by maintaining access to resources and responding to community and stakeholder inquiries".

Following the release of the Community Views Report on the state nuclear proposal, which showed a majority of the state's citizens were not in support of the waste site, the Premier announced a statewide referendum on the issue late last year.

Mr Weatherill said at that time that no date was set for the referendum, it was unlikely to happen within at least the next decade. He also said the Government was unlikely to take significant steps to find a site or a nation willing to sell its waste to SA until a political consensus re-emerged.

"Obviously we'd have no chance of success at the moment," he said of the referendum. "There's no point in promoting a referendum that has no chance of success."

**Further information on the state Government's nuclear conversation available at:** [www.nuclear.sa.gov.au](http://www.nuclear.sa.gov.au)



# All-inclusive launch of community Festival



At the official launch of the multi-award winning Festival Fleurieu, the SA Governor His Excellency the Honourable Hieu Van Le enjoyed a Welcome to Country by Kaurna Elder Uncle Lewis and a Welcome Dance led by Major Sumner and the Tal-Kin-Jeri Dance Group. His Excellency is pictured above with Major Sumner. For more photos from the Festival visit <http://www.festivalfleurieu.com.au/2017/photo-gallery.htm>

## The Premier's NAIDOC Award

### Celebrating NAIDOC Week 2017

The Premier's NAIDOC Award recognises the outstanding achievements and service of an extraordinary South Australian who has made a significant contribution to the lives of Aboriginal people in South Australia.

### Eligibility

**Nominees must be:**

- a resident of South Australia
- over the age of 18 years as at the 1st of January in the year in which they are nominated
- a person who has made a significant contribution to the lives of Aboriginal people in South Australia.

Please note that persons cannot nominate themselves.

### Referees

Along with the nomination form, please provide the names and addresses of three referees who are in a position to comment on the nominee's service.

**Nominations must be received by 5pm Wednesday 14 June 2017.**

**Please send your nomination marked 'confidential' to:**

The Premier's NAIDOC Award  
C/- Jade Mathewson  
Aboriginal Affairs and Reconciliation  
Department of State Development  
GPO Box 320 ADELAIDE SA 5001

Or by email to [jade.mathewson@sa.gov.au](mailto:jade.mathewson@sa.gov.au)

Nomination forms can be obtained from the Department of State Development website:  
<http://www.statedevelopment.sa.gov.au/aboriginal-affairs>

For further information, you may telephone 08 8226 8900 during office hours.



# Three Regional Authorities sign agreement with State Government

The State Government has signed Aboriginal Regional Authority Recognition Agreements with the Ngarrindjeri Regional Authority, the Adnyamathanha Traditional Lands Association (ATLA) and the Far West Coast Aboriginal Corporation.

The agreements were signed in March and April. They are a further step in the Government's Regional Authority Policy, and follow the announcement last year that the government would recognise three organisations as South Australia's first Aboriginal Regional Authorities. The third organisation to be recognised is the Far West Coast Aboriginal Corporation.

On announcing the signing of the Agreements, the state government said that they mean the organisations are recognised as the lead regional decision makers.

Minister Maher said that "our Aboriginal regional Authority Policy is a commitment to work more collaboratively with

Aboriginal communities and to strengthen the relationship between the government and all Aboriginal South Australians".

Vincent Coulthard, CEO of ATLA said that the Regional Agreements cover the core parts of the relationship between his corporation and the government, and it is accompanied by a more detailed and flexible schedule.

"The Recognition Agreement just highlights some of the key points I mean like the preservation of culture, the economic sustainability for example. Then the schedule identifies how you go about delivering that," he said.

"We wanted a schedule that can vary from time to time as time goes on, we didn't want to get locked into a fixed document that can't be changed so through negotiations at the table with the government we can make some changes as needed," he said.



Above: Narrindjeri Regional Authority Agreement signing, left to right, Victor Wilson, Lena Rigney, Sandra Wilson, Eunice Aston, Minister Kyam Maher, Marshall Carter and Malcolm Aston Snr.

## Constitutional recognition must make Indigenous lives better. Otherwise what's the point?

By Cheryl Axelby and Klynton Wanganeen

Last weekend the Referendum Council held its 10th regional dialogue to discuss constitutional recognition with Aboriginal and Torres Strait Islander people in Adelaide. We see this referendum as a once-in-a-generation opportunity to secure real and meaningful reform for our people. We want to make it happen.

This is a story that began long before the constitution was enacted. For South Australians, the imperial letters patent created a moral debt that is yet to be made good. Until that moral debt is redeemed, the soul of our country cannot be at ease.

The letters patent established the province of South Australia in 1836 and contained a serious condition: the fair treatment of the Aboriginal owners. The letters 'Provided Always' that "nothing... contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own Persons or in the Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives". This was the crown's promise to always treat Aboriginal Australians with dignity, fairness and respect.

It was not the first such royal promise. In 1787, King George III instructed Arthur Phillip "to endeavour, by every possible means, to open an intercourse with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them".

The crown carried some honourable intentions in relation to our people.

But those good intentions have largely not been realised. The way things played out, Aboriginal people were not treated with 'amity and kindness' and our rights were not respected as the letters patent required.

Constitutional recognition must fix this. This reform must ensure that our people will be treated more fairly in the future. The moral debt must be lifted, so all Australians can move forward together with lighter hearts.

We Aboriginal people of South Australia have survived, despite the injustices of the past. Our cultures and languages remain strong and must be cherished and shared. We remain connected to our land. Some of us lived through the stolen generations. But we all keep pushing and fighting for better lives. Our mob must be the most resilient people on the face of this planet.

The delegates agreed that constitutional recognition must include substantive reform. We too reject minimalism, like our counterparts across the country. We all want a bit of blackness in this country's white document – but not just for symbolic effect. We want this reform to make black lives better. Otherwise what's the point?

If we go for a weak option, we will never have another go in this lifetime. The minimalist 'racism out, recognition in' out model, or simply deleting the word 'race' from the constitution, would not address the legal challenges faced by Aboriginal people in South Australia.

Aboriginal people are born with one foot in the grave. Some of us are told this when we are just 12 years old. We are currently worse off in our incarceration

rates than we were at the time of the Aboriginal deaths in custody report. Too many children live in out of home care. Ice epidemics are rife. Constitutional recognition must improve the system, so that our people are more empowered to take charge to solve these problems.

The government has the power to make laws for us, but in the current system we cannot easily take responsibility and leadership in these decisions. We want to make our own decisions about our lives. Too often governments talk about us, but they don't talk to us. Consultation is poor.

As only 3% of the population, our voices can't easily get into parliament. Current Indigenous MPs must represent their political parties and their electorates. They do not represent an independent Aboriginal voice.

Many delegates agreed that we need our rights enshrined and protected. We need them locked down in the constitution. Legislation is in one day and out the next. Native title amendments get rushed through without proper consultation. ATSIC was our peak legislated body, but it got struck down.

Currently, we don't have secure power to take responsibility and leadership – pursue self-determination – in our affairs. Many of us believe this power must come from the constitution, where it can be guaranteed.

There was therefore strong support for a voice to parliament, through a properly representative, land-based body that is not hand-picked and that is guaranteed by the constitution, as well as support for agreement-making reforms through a truth and reconciliation process. There was strong interest among delegates

in a treaty or treaties, but a treaty was not viewed a silver bullet. It all depends on how legally effective it is. A treaty enacted in legislation can be changed or struck down. A statement of acknowledgement was also considered important, but only accompanied by substantive reform.

The importance of languages and cultures was emphasised in the discussion. The Aboriginal and Torres Strait Islander languages are Australian languages and should be recognised as such. This is the true heritage of our nation, and the inheritance of all Australians.

We in South Australia are ready to stand united and work together to achieve meaningful constitutional recognition for our people. We ask all Australians to hear our voices and join us on this journey. We ask government to listen too, and to work with us after the final gathering at Uluru. We do not wish to passively hand over our reform requests. We want to sit down and negotiate with all politicians.

This is about making good on past promises. It is about building a better and fairer Australia. It is about lifting the moral debt, so that our country can heal and grow stronger together. We can do it if we all work together, with good hearts and hard heads. It's time for change. Let's make it happen.

**Cheryl Axelby and Klynton Wanganeen were co-convenors of the Referendum Council's regional dialogue in Adelaide in March 2017. This article was first published in The Guardian. We thank the authors for permission to reprint it in Aboriginal Way.**

# North America offers lessons on nation building

**Nine representatives from the three Aboriginal Regional Authorities in South Australia visited North America recently to see how First Nations there are organising, building strong economic bases and working with state and federal governments.**

The trip, which took place in February, is part of a program of Aboriginal Nation Building workshops for Regional Authorities organised by the State Government, which began last year.

The trip covered sites across Arizona, New Mexico and British Columbia including the Tohono O'odham Nation, Hopi Nation, Laguna Pueblo, Ktunaxa Nation and the Squamish Nation.

Those communities were chosen by delegation leader Professor Stephen Cornell from the University of Arizona to showcase a wide range of traditional and contemporary governance structures, innovative economic ventures and approaches to Treaty.

According to one representative, Adnyamathanha Traditional Lands Association (ATLA) Chair Vincent Coulthard, the trip offered valuable insights into how carefully negotiated agreements with the state can form the basis of a strong economic future for Aboriginal communities.

Window Rock, a small city that serves as the seat of government and capital of the Navajo Nation, was one example of that, he said.

"Their treaty is written up in such a way that it can provide for the First Nations people to generate income. They not only get their funding allocated by the Federal Government, but also they can generate income from within their land. So people go and start up a little coffee shop or a butcher shop or a supermarket, there at Window Rock, they pay taxes to the First Nations people.

"That's how they build their governance and their wealth. They are also exempt from the government laws about casinos

so like a lot of the First Nations people have casinos throughout America really," he said.

A visit to the Squamish Nation in British Columbia demonstrated a similar model said Mr Coulthard.

"Like the Squamish Nation for instance, they occupy a parcel of land just on the outskirts of Vancouver and they provide services, all these essential services, they've got schools, they've got hospitals, they've got coffee shops, which are owned by the people who live there, paying taxes back to the nation, they're using their agreements to generate wealth," he said.

As well as offering a vision of economic development, Mr Coulthard said that the journey offered food for thought on how treaty might work in Australia.

"I suppose it rang some warning bells in terms of treaties, because you know what are the issues today and what we look at today, we have to be very careful with treaties that it moves with the times you know.

"You know a hundred years from now who knows what how life's going to be for future generations. So you can get locked into a treaty concept you know as a total agreement and there's no way out, you're stuck with it.

"What would be great would be if it could identify that there is a treaty between the government and the Aboriginal people in their states and their descendants now and forever. The treaty has got to take that kind of broad approach like the Letters Patent and then that would work.

"Otherwise if you're locked into today, you'll be stuck with it for another hundred years two hundred years' time. That's one of the things the Native Americans are finding," he said.

The Office of Aboriginal Affairs and Reconciliation within the Department of State Development says that the State Government is committed to supporting Aboriginal Regional Authorities to develop further in Nation Building, and they will continue to explore ways to support this.

## Stolen Generations reparations applications awaiting decision



**The Aboriginal Legal Rights Movement (ALRM) says that the guidelines for the Stolen Generations reparations scheme mean that many people could miss out on funding despite having been stolen from their families as children.**

With over 350 applications awaiting state government assessment, ALRM CEO Cheryl Axleby (pictured above) said that the guidelines ruled out people receiving reparations if their removal had been sanctioned legally.

"Well the standard that has been set by government is that as long as they weren't deemed to be legal removals, so if there is documentation that an application was made in the court to remove children, then it's more than likely that that will be held to account to say people were not removed," she said.

"What is really concerning about that is that we know there were many

family members and many parents who actually signed paperwork for governments to take children into care based on education.

"We are really concerned about a legal definition, by just having a legal document when we know that people were coerced into signing documents or didn't understand what it was that they were actually signing, that is our concern," Ms Axleby said.

The scheme was designed by the State Government as an alternative to legal action for members of the Stolen Generations.

"While the commitment is to try and make it less of an impact for members of the stolen generation to be able to apply and get some form of reparation for what's actually happened to them, there has been some concerns from community about the amount that has been offered by the state and the lack

of recognition about the impact on loss of identity, loss of culture, loss of connection to community, and the level of pain and trauma that has been experienced by being removed.

"So there this scheme was basically set up to create an opportunity for members of the community who didn't want to go through a lengthy court process, and it probably has achieved that in that sense, but then at the end of the day does it really provide the justice that people are seeking that we will be waiting to see when we start looking at how many claims will be rejected and how many are accepted," said Ms Axleby.

According to the Scheme guidelines, to accept any offer from the Scheme, people will need to sign an agreement to "discharge and release the Government from any future legal liability in relation to your removal".

The ALRM is encouraging any community member who receives a reply, positive or negative, from the Scheme to contact Legal Rights again to discuss their options.

"We just need to remind members of our community who put a compensation claim in for being a member of the stolen generations that there is still a legal recourse that people can still take if they are not accepted within this scheme. So once members receive letters from the state government on whether they have an offer made to them, we encourage members to still come back to legal rights to get support to ensure that their rights are protected and similarly even if they get letters of rejection, we still encourage them to come and talk to us," said Ms Axleby.

The Scheme also has a community fund component which is offered to "support projects or programs that will promote healing for members of the Stolen Generations, their families and the wider community".

The State Government has received 60 applications under this fund and says that they will now be assessed by a panel of senior Aboriginal people.

Ms Axleby hopes that previous consultation with Stolen Generations community will be taken into account in this decision making.

"It really is up to the government to ensure they are consulting and bring together members of the stolen generations and to hear from them exactly what they think. Now we did this in early 2016, we had a meeting down at Tauondi and we had all the members that were attending the meeting to actually identify what community reparations was and what it is that they were seeking," she said.

Ideas proposed at that meeting included monuments being built around the state to remind people about the history of Stolen Generations and the establishment of a scholarship scheme for families of Stolen Generations members.

"That list went to the Minister for Aboriginal Affairs at that time. So you know I understand the government has now put out a bit of an expression of interest calling for organisations as well to be able to make application but let's not forget that this is about individual members of the stolen generation and we need to make sure that their wishes are respected," said Ms Axleby.

Our column **in review** features reviews and stories on Aboriginal writers, artists and musicians. We welcome your feedback and suggestions. So if you know of a new work about to be published or an artist or musician please contact us on (08) 8110 2800.

# The Secret River at Anstey Hill

A powerful play telling the story of the conflict between early convicts and the original inhabitants of our country was a sold out success at this year's Adelaide Festival.

Staged at the Anstey Hill Quarry for the Festival, *The Secret River* tells the story of William Thornhill, a convict sent to New South Wales in the early 1800s. He and his family try to claim land on the Hawkesbury River, but come into conflict with the true owners, the Dharug people.

Ningali Lawford was the narrator of the Adelaide production of *The Secret River*, originally an award winning book written by Kate Grenville and adapted for theatre by Andrew Bovell.

She told *Aboriginal Way* that the play tells the important story of violence and massacre underlying Australia's early history.

"This is a fiction, but it's also a fact. So the fact is massacres are not new to us



Photos courtesy of The Adelaide Festival.

# in review

in this country. As much as people think there wasn't any massacres, there were massacres. We have to understand. And to understand our past we need to move onto our future. With all that in mind, we have to teach our kids that Australia did have a black history," she said.

The story has had a life as a novel and then television series and has developed along the way. While the story has had a strong impact in educating people about Australia's history of invasion, there was criticism that the Indigenous voice was not strong in its original telling.

"It's so much more different this time around," said Ms Lawford.

"I was involved in the TV series myself, but with this production, it literally just speaks of the two groups of people that live on the Hawkesbury. It talks about the Thornhills and the people that live along the Hawkesbury, the other community, people that live on the river, and their interaction with the Indigenous people. So the stories blend from the two groups

of people, the Indigenous people and the non-Indigenous people and how they try to find a middle ground and become friends and then circumstances just push them to a different direction," she said.

*The Secret River* tells a powerful and disturbing story, one that is challenging for actors and audiences alike.

"So it's quite a hard story to tell, and having to tell it from the beginning to the end, it's so emotional, but it's a story that should be told," said Ms Lawford.

The Adelaide production also featured local actors, including Kurna elder Stephen Goldsmith and *Rabbit Proof Fence* star Natasha Wanganeen.

Asked what's special about this Adelaide production of *The Secret River*, Ms Wanganeen said that the setting made it unique.

"For the type of production that we're doing, that is set back in the day before colonisation was happening, that location is absolutely perfect," she said.

"We've had possums climb on our lights and butterflies and dragonflies everywhere. I mean it's a beautiful setting for a unique story. The story of *The Secret River* is a powerful one and the setting is powerful too, I can't even describe the feeling I get when I go out there," said Ms Wanganeen.

According to Ms Wanganeen, the story has opened many people's eyes about Australian history.

"It changes them. Because then they know how this beautiful country got to the point it's at now.

"It shows how all of this disastrous, murderous stuff happens because of mis-communication. And hopefully we can learn from that, and start understanding each other a bit more and protect what we have left. White and black," said Ms Wanganeen.

***The Secret River* is a production of Sydney Theatre Company, presented in partnership with State Theatre SA and The Adelaide Festival**

# SANTS Services

## Who we are and what we do

SANTS is recognised and funded as the Native Title Service Provider for South Australia by the Commonwealth Government under s203FE(1) of the *Native Title Act 1993* (Cth).

SANTS provides legal representation and guidance, anthropological research and community liaison to support native title applications, negotiations and determinations.

SANTS performs all of the functions of a representative body in native title throughout South Australia.

Those functions as set out in Section 203B of the *Native Title Act* are:

- Facilitation and assistance;
- Certification;
- Dispute resolution;
- Notification;
- Agreement making;
- Internal review; and
- Other functions.

SANTS provides a wide range of services to South Australia's Aboriginal Nations who hold or may hold native title.

SANTS is committed to working with Aboriginal Nations to realise their

aspirations, which are often broader than the recognition of native title.

Native title determinations now have been made over more than half of South Australia. There are currently fifteen PBCs established in SA to manage native title rights and interests.

SANTS works with many of these native title groups to enhance their position to manage their native title outcomes, comply with legislative responsibilities and develop and grow to achieve their aspirations.

Our activity in this area includes:

- developing and strengthening governance practices including through provision of legal advice, development of corporate policies and delivery of education and training initiatives;
- facilitating community-based planning to develop strategic and operational plans;
- developing and enhancing stakeholder relationships;
- implementing agreements and identifying, managing and enjoying native title benefits;

- accessing business development services and advice;
- identifying and delivering community development projects including to protect cultural heritage and country;
- engaging in policy and legislative reform and implementation.

Recently, SANTS delivered its first corporate governance training program to PBCs and also delivered two financial management training sessions in partnership with PwC's Indigenous Consulting (PIC).

In our work in community development, our focus is currently on protecting cultural heritage and caring for country. These collaborative caring for country projects are important for the ongoing exercise and protection of native title rights and interests.

SANTS welcomes Aboriginal Nations and native title groups who would like to work more with us.

SANTS receives funding from the Commonwealth and South Australian Government to perform its functions and to provide other services.



Clockwise from top left: Keith Thomas and Karina Lester; Field Project at Gawler Ranges National Park; Fencing at Thurliga; Sturt Desert Pea, APY Lands.



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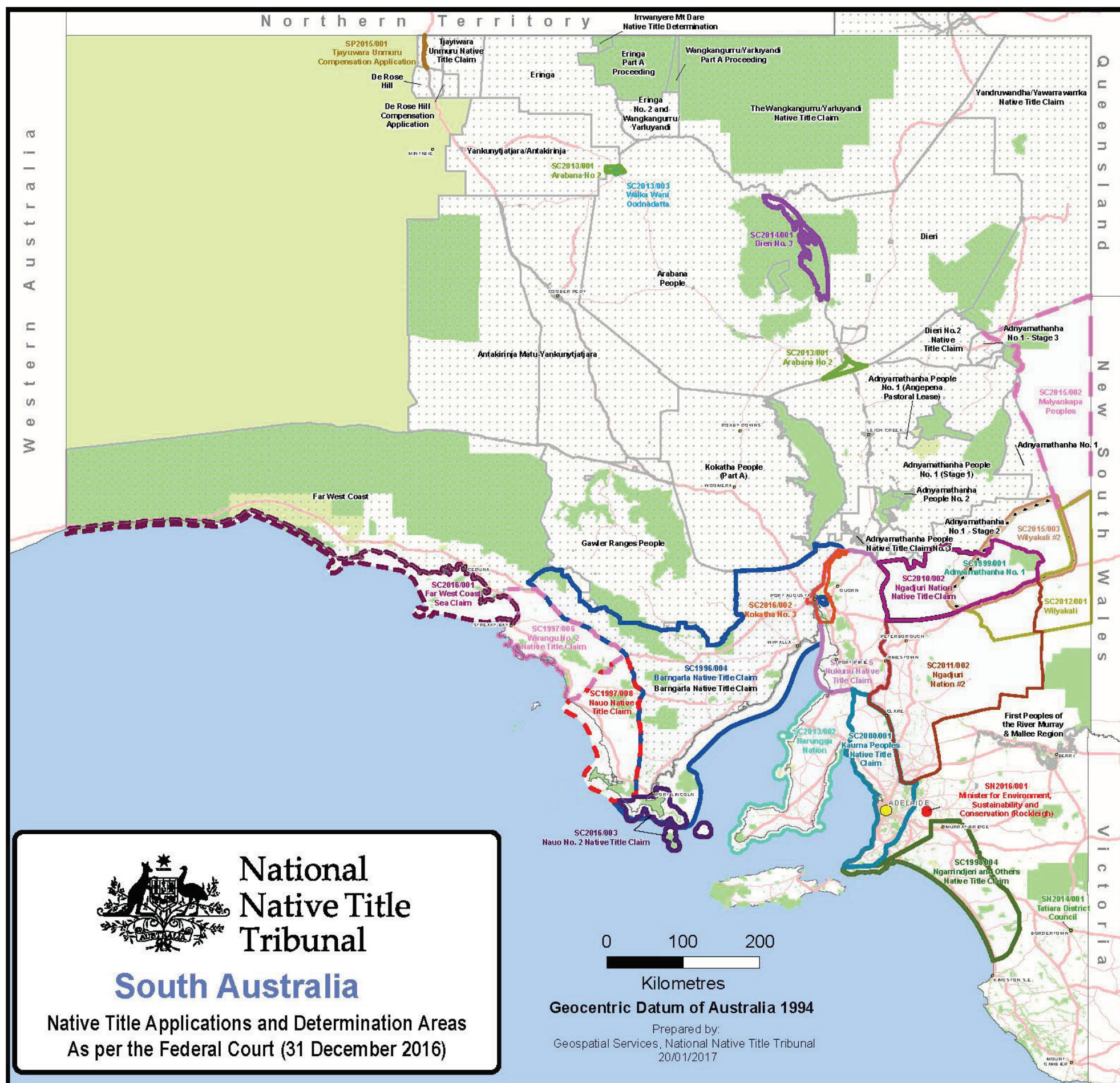
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# Native Title Areas in South Australia



## Get Aboriginal Way

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