

**Parliamentary Joint Committee on
Native Title and the Aboriginal and
Torres Strait Islander Land Fund**

OPERATION OF THE NATIVE TITLE ACT

**Inquiry Into The Effectiveness Of
The National Native Title Tribunal**

Submission No:1a

Mr Wesley Aird

Eastern Yugambah Native Title Group

Management Committee

PO Box 5543

WEST END QLD 4101



E-mail:

Eastern Yugambah Native Title Group
Management Committee

21 June 2002

Mr Peter Grundy
Committee Secretary
Parliamentary Joint Committee on Native Title and the
Aboriginal and Torres Strait Islander Land Fund
The Senate
Parliament House
Canberra ACT 2600

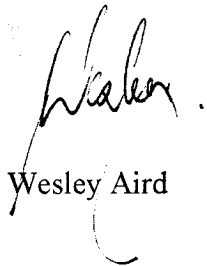
Dear Mr Grundy

Eastern Yugambah application for Determination of Native Title

Thank you for your letter dated 14 June 2002.

The Eastern Yugambah wish our recent letter submitted to the Committee to be received as a submission and made public.

Yours sincerely



Wesley Aird

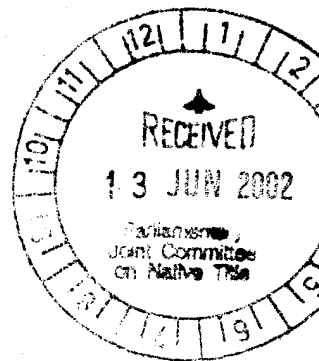


Eastern Yugambah Native Title Group
Management Committee
a group maintaining customary laws, traditions and connection to country
PO Box 5543, West End Qld 4101

Eastern Yugambeh Native Title Group
Management Committee

11 June 2002

Mr Peter Grundy
Committee Secretary
Parliamentary Joint Committee on Native Title and the
Aboriginal and Torres Strait Islander Land Fund
The Senate
Parliament House
Canberra ACT 2600



Dear Mr Grundy

Eastern Yugambeh application for Determination of Native Title

In August 2001 the Eastern Yugambeh wrote to the Parliamentary Joint Committee outlining some of the experiences involved with dealings with the native title process. The following update is provided for the Committee and we again reiterate our offer to meet with members of the Committee to discuss our experiences.

Mediation of overlapping claims

The Eastern Yugambeh application is in overlap with two claims that have both been made by a sole applicant on behalf of three families that are a subset of the Eastern Yugambeh group. During 2001 the Eastern Yugambeh made repeated requests for mediation. Despite the February 2001 orders of the Federal Court for mediation, the sole applicant of the overlapping claim was disinclined to attend mediation and the Tribunal accepted this for most of 2001. In December 2001 the Tribunal President convened a mediation conference, the second in ten months. Although two more mediation conferences have been held in 2002, the progress is slow and at risk of being overtaken by the trial that has been ordered by the Court.

The Eastern Yugambeh commend Mr Neate for taking the initiative to convene the mediation conferences held over recent months, his efforts are appreciated. On the other hand, Queensland South Representative Body has from time to time advised their client (the sole applicant in the overlapping claim) to not attend mediation. The partisan and somewhat unfathomable behaviour of Queensland South Representative Body is dealt with later in this letter.

Application of the test for registration

The Eastern Yugambeh have found the application of the test for registration to be somewhat subjective and vexing. Without spoiling the punch line the following comments are provided as an example of the frustration we experienced.

In the months leading up to the end of 2001, the Eastern Yugambeh and Ms Merranie Strauss, Tribunal delegate, had been in regular correspondence in which Ms Strauss made regular

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requests for information. This rather unusual series of requests over a number of months culminated in letter dated 9th January 2002 from the Eastern Yugambeh to the Tribunal President in which we alleged that the delegate had, among other matters;

Breached Tribunal policy 4.4.2 in relation to unfiled material that amounted to an amendment of an application,

Erroneously treated apical ancestors of the Eastern Yugambeh and the overlapping Kombumerri applications,

Relied on material submitted in breach of copyright,

Gave undue weight to unexplained bare assertions in petition form,

Sought to go behind affidavits of the Eastern Yugambeh applicants, and

Treated Eastern Yugambeh tradition and custom in a manner that is ethnocentric.

In this letter the Eastern Yugambeh also alleged that the Tribunal staff had prejudged the application and had lost objectivity.

The complaint was referred by the President to the Registrar. In a pithy half page response from the Registrar he responded to all of the above points in a single sentence.

Unable to make a decision, the delegate continued to rely on information she was prohibited by published policy from relying upon, and the correspondence continued to be exchanged whilst the logic continued to be shrouded in ethnocentricity. By this stage so much material had been exchanged it appeared to the Eastern Yugambeh that the procedure had lost direction. In attempt to restore logic to the process the Eastern Yugambeh again sought intervention from the Tribunal President making specific mention of the inaction on behalf of the Registrar. Again this was referred by the President to the Registrar. This time the Registrar's response went all the way to two and half pages. However, it contained no new information, neither insight nor assessment and it was no less confusing than the logic of the Delegate that had by this stage had all but disappeared.

Putting aside for the moment that the registration test took some 15 months, the process highlighted some interesting points;

The policies of the Tribunal were not strictly relied upon;

A second-round complaint was handled by a person who was in large part the subject of the complaint, namely the Registrar;

Based on the exchange of correspondence it would appear that justification of the past handling of the registration test was more important than any regard for an objective outcome.

The Eastern Yugambeh would like to make available to the Committee all correspondence relating to the registration test. If you are interested in having a read, please do not hesitate to contact me.

Queensland South Representative Body Aboriginal Corporation

From the outset the Eastern Yugambeh have sought information from Queensland South Representative Body Aboriginal Corporation in order for the native title group to make an informed decision relating to representation through the onerous native title process. We have sought no more than published policies, protocols and examples of where the organisation has resolved overlaps and assisted in determinations of native title. Put simply, Queensland South Representative Body has been either unable or unwilling to answer our questions.

Not content with the lack of response from the representative body, and after a year of frustration, in January 2002 the Eastern Yugambeh wrote to the Aboriginal and Torres Strait Islander Commission (ATSIC) in an attempt to clarify our position. In a letter to ATSIC in March 2002 the Eastern Yugambeh alleged Queensland South Representative Body:

Demonstrated an inability to conduct a simple anthropological study which would be a function integral to its role as a representative body in terms of the *Native Title Act*.

Did not satisfactorily represent the Eastern Yugambeh native title group, a group who may hold native title in the organisation's area.

Did not consult effectively with the Eastern Yugambeh who are a constituent group within the QSRBAC area.

Did not satisfactorily perform its functions in terms of the *Native Title Act*.

An example of a partisan act by Queensland South Representative Body is the material lodged at Court on 3 April 2002 for a hearing the next day. Although the document is rumoured to be around 120 pages, I am yet to meet anyone that has bothered to count. The submission was prepared without any consultation with the Eastern Yugambeh and yet sought to subsume the Eastern Yugambeh application into the substantially smaller overlapping claim lodged on behalf of a subset of the larger claim. Further, the submission sought to make Eastern Yugambeh the second applicants in the consolidated proceedings. Not surprisingly, the Court quickly disregarded the submission.

ATSIC has yet to provide a substantive response to the various requests for assistance. Again, the Eastern Yugambeh would like to make available to the Committee all correspondence relating to the registration test.

Our dealings with the Queensland South Representative Body highlight that in the current system there is no practical or effective accountability. Despite all the words and intent, the statutes governing the representative body and ATSIC are meaningless in a setting bereft of good will and transparency.

Yours sincerely



Wesley Aird