

**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:36

Received 12 June 2003

Carroll Go-Sam

**Spokesperson for Dyirbal Native Title
Group**

Dyirbal Native Title Working Group

PO Box 6114

ST LUCIA QLD 4067



E-mail: carrollgosam@hotmail.com

Spokesperson,
Carroll Go-Sam,
Dyirbal Native Title Working Group,
PO BOX 6114,
ST LUCIA QLD 4067
Email: carrollgosam@hotmail.com

26th May, 2003

Ms Maureen Weeks,
Committee Secretary,
Parliamentary Joint Committee on Native Title and Aboriginal and Torres
Strait Islander Land Fund,
Parliament House,
CANBERRA ACT 2600

Dear Ms Weeks,

Please find attached a copy of a submission to the Parliamentary Joint Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund on behalf of the Dyirbal traditional owners and the Dyirbal Native Title Working Group.

Our submission primarily consists of a letter with attached Appendices. The letter outlines a history of the Dyirbal peoples involvement with Native Title since 1999 by discussing our engagement with the North Queensland Land Council, the National Native Title Tribunal and the Bar-Barrum people in an attempt to protect our inherited rights to country.

If you wish to contact the Spokesperson, Carroll Go-Sam, who currently works at the Aboriginal Environments Research Centre, based in the Department of Architecture, University of Queensland, St Lucia, Telephone No. 3365 3660 or by personal email at carrollgosam@hotmail.com.

regards,



Carroll Go-Sam,
Spokesperson for Dyirbal Native Title Group



DYIRBAL TRADITIONAL OWNERS

**SUBMISSION TO THE JOINT PARLIAMENTARY ENQUIRY ON NATIVE
TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER
LAND FUND**

30th May, 2003

Spokesperson,
Carroll Go-Sam,
Dyirbal Native Title Working Group,
PO BOX 6114,
ST LUCIA QLD 4067
Email: carrollgosam@hotmail.com

26th May, 2003

Ms Maureen Weeks,
Committee Secretary,
Parliamentary Joint Committee on Native Title and Aboriginal and Torres
Strait Islander Land Fund,
Parliament House,
CANBERRA ACT 2600

Dear Ms Weeks,

BACKGROUND OF DYIRBAL PEOPLE:

As appointed Spokesperson for the Dyirbal Native Title Working Group, I would like to make a submission to the Parliamentary Joint Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund to provide additional information to the Bar-Barrum Case Study. The Dyirbal (aka Jirrabul, Jirrabal, Jirdabal, Jiddabul, Dyirbal, Dyirbalgnan) people are the traditional owners for country which lies to the east of the water shed of the Great Dividing Range which includes the townships of Herberton, Ravenshoe, Innot Springs, Tully, Wooroora, Kara, Glen Gordon, Kirrama, Tirrabella (note as a general location guide*). We are the people who are suffering from having our country claimed by the Bar-Barrum who refuse not only to respect traditional laws and customs, but also conform to the requirements of the Native Title Act. The Bar-Barrum who traditionally reside on the western side of the Great Dividing Range are said by Dyirbal people to drink from the water that flows west from the 'spring point' or 'water shed' of the Great Dividing Range which forms the Walsh River.

DYIRBAL CHALLENGE TO BAR-BARRUM NATIVE TITLE DETERMINATION CLAIM NO. 1:

In late March, 2001 the Dyirbal gained knowledge for the first time, that the Bar-Barrum people were claiming significant allotments of land east of the Great Dividing Range. The Bar-Barrum people at the time were fully funded by the North Queensland Land Council (NQLCAC) and represented by an external lawyer, Mr Terry Fisher and barrister, Mr Peter Poynton. The Dyirbal people at that time were not an applicant claimant group, although on the 7th August, 1999 the Dyirbal had attempted to become an applicant claimant group by inviting the North Queensland Land Council to a formal meeting at Ravenshoe to indicate our desire to lodge a claim over our traditional land. However, assistance from the NQLCAC was not forthcoming, most probably due to their own internal dysfunction.

The NQLCAC at that time did not have internal mechanisms for traditional owner groups to apply for assistance for the lodgement of a Native Title Determination Application. The Dyirbal people also have a brief history of entanglement with Mr Poynton which stems from a period when he presented himself as an employee of the NQLCAC on the 20th June, 1999 to Lillian Freeman a senior Dyirbal person. He had a prepared Native Title Determination Application and wanted to obtain some further genealogical information to attach to the Application and asked Lillian Freeman who was the oldest Dyirbal ancestor in her family. Mr Poynton had never met with a larger representative group of Dyirbal people but had the names of some Dyirbal people on this prepared Application which he presented to Lillian Freeman [See Appendix 1].

When I spoke to the Dyirbal people whose names appeared on the application, they had no understanding that the Application was for Native Title, and they did not know what Native Title was and reported that they had been asked by Mr Poynton what their names were and if they were Dyirbal people. After being provided with a copy of the Application whilst I was visiting my family in Herberton, Ravenshoe and Mt Garnet I then contacted the NQLCAC to complain about the inappropriateness of Mr Poynton's methods. I was requested that if I wanted to make a complaint and withdraw Dyirbal support of the appointment of Peter Poynton as the Dyirbal people's legal representative, that I should do so formally and draft correspondence to the NQLCAC and the NNTT. I was required to do this by the NQLCAC

despite the fact that Dyirbal people as a collective group did not accept or request Mr Poynton to be our legal counsel. Dyirbal people felt that the tactic of Mr Poynton to approach one or two Dyirbal people actually encourages division amongst traditional owners and that all people who were approached agreed it was better to approach Native Title as one mob and that their names should be withdrawn from the Application. We also felt that although it was an expedient way to lodge a claim it lacked thorough research and did not ensure that the majority of Dyirbal families had an opportunity to participate in the process.

Some time after this, Mr Poynton became the CEO of the NQLCAC during a period when the Land Council was deregistered. During Mr Poynton's appointment as CEO of NQLCAC, Dyirbal people again applied in November, 2000 for assistance and although assistance was promised it was never forthcoming. So Dyirbal people were extremely discouraged and disheartened at becoming involved with a representative body that was so dysfunctional.

DYIRBAL – BAR-BARRUM AGREEMENT 6th APRIL, 2001:

In late March, 2001 some Dyirbal people were meeting with the Herberton Shire Council and discovered a notice identifying that the Bar-Barrum people were holding a NT Consent Determination celebration at the Herberton Shire Council in April and that their claim included land in Herberton. This was the first time that Dyirbal people had become aware that Bar-Barrum people were claiming Dyirbal country as their own. The Dyirbal people immediately contacted Dr Paul Memmott, an anthropologist based at the University of Queensland.

Dr Memmott who had conducted historical research with some Dyirbal families since 1993, was able to bring to the attention of the NQLCAC and the National Native Title Tribunal (NNTT), that Dyirbal people vigorously asserted that country east of the Great Dividing Range was not the traditional country of the Bar-Barrum. The NQLCAC subsequently coordinated a meeting between the Dyirbal and Bar-Barrum on the 6th April, 2001 in Innisfail. In fact, at this meeting in Innisfail on the 6th April, 2001 no clear maps were produced by the NQLCAC indicating the extent of Bar-Barrum claims. The Bar-Barrum people had in attendance their legal representative, Mr Peter Poynton and the Dyirbal at that time had no legal representative to assist in mediating an agreement with the Bar-Barrum. The Dyirbal people attended the meeting as 'one voice' to inform the Bar-Barrum that they were claiming Dyirbal land in the Wild River Valley and Silver Valley. However, the meeting directed by the NQLCAC stipulated that several old Dyirbal people in attendance [who are not literate] and Bar-Barrum representatives Mr John Wason and Mr Tom Congoo were to have a closed meeting with NQLCAC representatives where an Agreement of sorts was documented and signed by two Dyirbal old people and Bar-Barrum representatives, Mr John Wason and Mr Tommy Congoo. [see Appendix 2]. Younger and middle-aged Dyirbal people were asked to wait outside.

The signed document indicates that the two Bar-Barrum men conceded that the water shed of the Great Dividing Range was a division between Dyirbal and Bar-Barrum country and that they were claiming Dyirbal land but requested that a special deal be struck so that their claim could go to its imminent consent determination outcome, and that the blocks of land would be given back to Dyirbal people under some later unspecified agreement. During the course of this meeting Bar-Barrum representatives Mr Tommy Congoo and Mr John Wason were able to freely and regularly consult their legal counsel, Mr Poynton, who was outside the room where the closed meeting was being conducted. When the Agreement was signed, the Bar-Barrum representatives were extremely joyful at the outcome. However, they have recently said that they were pressured into signing this Agreement and have informed Dyirbal people that, "their legal advice has told them that it is not worth the paper it is written on" (Extract from Minutes of Meeting between Dyirbal & Bar-Barrum on the 17th April, 2003) However, in the case of the Agreement signed by Bar-Barrum we ask why did their principal claimants sign a piece of paper acknowledging that Dyirbal country lie to the east of the water shed of the Great Dividing Range, when such an Agreement appeared to advantage the advancement of their Determination of Claim No. 1. (see Appendix 2 signed by Mr Tommy Congoo and Mr John Wason).

After the signing of this so-called Agreement, the matter was considered by the NQLCAC CEO at the time to be closed, requiring no further action. It was considered an expedient way to proceed to Bar-Barrum Determination of Claim No. 1 by relinquishing the rights of Dyirbal people. However, when a copy of the so-called Agreement was faxed to Dr Memmott by a Dyirbal person who was present but excluded from the closed meeting, Dr Memmott faxed the letter to the NNTT and a copy to an independent lawyer seeking legal advice. The legality of the document was placed in question by the independent legal

counsel and although not legally enforceable, the document gave the impression that Dyrbal old people willingly chose not to assert their rights of traditional ownership over their country.

DYIRBAL SEEK ASSISTANCE FROM THE NQLCAC TO MOUNT A CHALLENGE TO BAR-BARRUM NATIVE TITLE DETERMINATION CLAIM NO. 1:

Correspondence from the Jiddabul Aboriginal Corporation to the NQLCAC was drafted, seeking assistance for the Dyrbal to defend their rights in the Federal Court. The correspondence from Jiddabul Aboriginal Corporation sought assistance to engage an independent anthropologist and lawyer to assist in preparation of an appeal to the Federal Court. This request was rejected by NQLCAC for two main reasons, the first being that the Dyrbal had not completed a NT Determination Application form seeking assistance from the NQLCAC and therefore were not recognised as a legitimate claimant group; and secondly that the request did not conform to the new policy of the NQLCAC which disallowed the engagement of external consultants. However, in-house NQLCAC staff legal representation was also not forthcoming and Dyrbal were refused any assistance. Largely due to this rejection by the then Executive management of the NQLCAC to assist Dyrbal people, we were forced to seek the pro bono services of lawyers and we further requested Dr Paul Memmott to continue to assist us without payment in halting the Determination of Bar-Barrum Claim No. 1 over Dyrbal country.

NNTT BRIEFING OF DYIRBAL ASSERTIONS OF RIGHTS TO COUNTRY EAST OF THE GREAT DIVIDING RANGE:

During the course of this legal action I contacted the Cairns office of the National Native Title Tribunal to seek their assistance in challenging aspects of the Determination of Bar-Barrum Claim No. 1 which had included allotments in Dyrbal country. I spoke to the case manager for the Bar-Barrum, Ms Amy Barrett and briefed her on our frustration in dealing with the NQLCAC. I distributed a memo to the NNTT Cairns office, written by Dr Memmott asserting Dyrbal interests in country east of the Great Dividing Range which included Wild River valley, including Dry River, Coolgarra, Silver Valley and Herberton [see Appendix 3]. Assistance was refused on the basis that the matter was now in the Federal Court and 'out of the hands' of the Tribunal. Although no assistance or mediation could be offered by the NNTT, Dr Paul Memmott telephoned Ms Barrett and the then CEO, Mr Jim Brooks to inform them of the Dyrbal peoples assertions and his own working knowledge of the genuineness and validity of such assertions.

Dr Memmott was able to procure a pro-bono barrister, Mr Chris Athanasiou to appear with him in the Federal Court before Judge Drummond on the 11th April, 01 on behalf of the Dyrbal people. Mr Athanasiou was briefed by Andrew Chalk and Associates in Sydney (who also gave pro-bono advice).

The Federal Court took the Dyrbal grievances seriously despite the late entry into the Determination process as an informal party and ordered both groups via their legal representatives to seek a mediated outcome acceptable to both. The outcome that was reached was that the Bar-Barrum withdrew allotments which were east of the Great Dividing Range and amended their Determination Claim No. 1. The Consent Determination was then successfully concluded, however, this outcome did not prevent the Bar-Barrum from reclaiming the blocks that they had withdrawn and claiming a further substantial amount of Dyrbal country in their subsequent claims. So why were these recent claims by the Bar-Barrum claims registered by the NNTT despite their knowledge of the history of Dyrbal people vigorously defending our country? This rhetorical question will be discussed, after I explain why Dyrbal people chose to halt proceedings at such a late date in the Determination process.

LACK OF CONSULTATION LEADS TO UNSCRUTINISED ASSERTIONS:

Up until April, 2001 the Dyrbal were not consulted collectively as a group by the Bar-Barrum, the NQLCAC or their consulting anthropologist or legal representatives and a formal meeting was never conducted by the NQLCAC. We now have knowledge that Dyrbal old people were spasmodically contacted between 1996-2000 by Bar-Barrum claimants but maps were never presented at these meetings showing the extent of Bar-Barrum claims. Most of these discussions were held at the homes of old people who are unable to read or write, do not understand maps and particularly do not understand Native Title. One old Dyrbal person was approached individually on several occasions by one of the people identifying as a Bar-Barrum claimant. Another old person spoke of being approached by one person identifying as a Bar-Barrum claimant and they were unsure of the purpose of the visit. They are uncertain to this day what the purpose or intention of these visits was. The surreptitious approach of old people hardly constitutes as an ethical and adequate consultation with neighbouring language groups. No minutes or records of these meetings were kept by Bar-Barrum people and we can only assume that they were informal meetings and not meeting with Dyrbal people in an official capacity. To our knowledge

none of these meetings were conducted by the NQLCAC or the anthropologist engaged by the NQLCAC on their behalf. Largely because these meetings occurred without the knowledge or participation of the broader Dyrbal people, and simply because old people are unable to grasp and understand the complexities of Native Title, they were oblivious to the actual activities or the extent of Bar-Barrum claims over their country.

The Dyrbal people from 1995-1998 were not able to engage in the Native Title process and I have outlined the reasons above for this lack of engagement with the Native Title process. The North Queensland Land Council during that time was operating for some period as either an unregistered but in particular, an unrepresentative Land Council. I note that this was common knowledge in the Aboriginal community. There were no thorough processes in place within the Land Council to ensure that the Bar-Barrum had widely consulted with their neighbours. Even when the Dyrbal made their interests known by attempting to participate in the Native Title process on the 7th August, 1999 and in November, 2000, the Land Council failed to follow through and consult with the Dyrbal to ascertain the extent of our traditional country. This again was largely due to the internal dysfunction of the NQLCAC at the time in our view.

The Bar-Barrum at the time of their Determination in June, 2001 achieved the kudos of being the only group on mainland Australia to have a determination in what is considered a region that is relatively densely populated. They were able to achieve this because their Native Title application was over USL land and they sought to gain recognition of minimal Native Title rights. The Bar-Barrum were able to achieve this via a negotiated outcome with the State and other respondent parties to their NT Determination Application No. 1. Even so, the duration of the Bar-Barrum claim took approximately six years to achieve.

WITHDRAWAL OF PARTICIPATION BY BAR-BARRUM WHEN GREATER SCRUTINY OCCURS:

However, when the NQLCAC finally became organised as a representative body with strict application of a new policy disallowing overlapping claims; the Bar-Barrum chose to withdraw their working relation with the NQLCAC. The Bar-Barrum to their advantage, presumably supported largely by their legal representatives, now work outside what is now a more functional representative body. They have subsequently claimed a significant part of Dyrbal country in their Claims #2, #3, #5, #6 and #7. They have also claimed country belonging to our southern neighbour, the Warungu. It is not to the advantage of the Bar-Barrum to return to the NQLCAC because they will be asked to withdraw their overlapping claims over Dyrbal and Warungu country [Appendix 2]. Additionally, current NQLCAC policy will not support their choice of engagement of external lawyers, nor does it support the lodgement of claims over country until thorough anthropological studies are conducted by suitably qualified practitioners.

The Dyrbal since August, 2001 have slowly reconciled with the changed management of the NQLCAC and since that time efforts have been undertaken to lodge a NT Determination Application over part of Dyrbal country which was achieved in January, 2003. I note that initially it was the Dyrbal preference not to use an in-house lawyer or anthropologist due to the activities of the former NQLCAC staff, we were extremely distrusting of the professionalism and integrity of the staff. The Dyrbal Connection Report (approx. 280pp) by anthropologist, Dr Benjamin Smith was completed on the 30th April, 2003 and in our view provides more than adequate documentation of who we are as a Native Title Group and demonstrates the validity of our connections to our Dyrbal ancestors and our country. (Note that Dr Memmott withdrew as the Dyrbal anthropologist once Dr Smith was engaged).

The Dyrbal, at the time of the lodgement of further Bar-Barrum Claims over our traditional country were advised by the NQLCAC to become respondent parties and that we had no other option but wait for a mediated outcome orchestrated firstly, by the NQLCAC and failing this, with the NNTT. Recent advice has informed us that the NQLCAC and Dyrbal had more options which should have been exercised prior to the registration of Claims #2, #3, #5, #6, and #7.

NNTT REGISTRATION OF FURTHER BAR-BARRUM CLAIMS:

However, recently the subsequent Applications by Bar-Barrum have been registered by the NNTT office in Cairns. These claims were registered despite the new management of the NQLCAC meeting with Tribunal representatives as outlined in Dr Ross Pearson's evidence with the NNTT in early 2002 to the Joint Committee on Native Title and the Aboriginal and Torres Strait Island Land Fund (JCNT&ATSILF NT 100, 14th April, 2003) who informed the NNTT not to give priority to the claims of Bar-Barrum because Dyrbal people asserted rights over the country the Bar-Barrum were claiming. Additionally, the NNTT's own file records of the Dyrbal people's strong assertion of rights over country to the east of the Great

Dividing Range in April, 2001 were also held by the NNTT and largely ignored or remained on file, but clearly not accessed when assessing subsequent claims by Bar-Barrum. Federal Court records also show that Dyirbal people became a respondent party to Bar-Barrum claims No. 2 & 3, I believe our assertions of Dyirbal interests with regard to Claims 2 and 3 indicate we would likely become respondents to further claims east of the Great Dividing Range. The Dyirbal believe this is a primary example of the ineffectiveness of the Tribunal to register claims from an informed position. The ambit claims of the Bar-Barrum over Dyirbal and Warungu country have never been treated with caution by the NNTT and are largely responsible for the mess we are confronted with today [see Appendix 4].

Now, because Dyirbal people have placed faith in a process which appears to have been largely inefficient in dealing with ambit and illegitimate claims over country, we are essentially disadvantaged because we have chosen to conform not only to the Registered NT Representative Body requirements, but also because we had some semblance of hope that the record held by the NNTT of the Dyirbal peoples strong assertion of rights on the public record since April, 2001, would prevent further ambit claims by this group over our country.

Our view is that the NNTT gets something so wrong largely because the Registration bar is set so low, which the Dyirbal-Bar-Barrum example highlights; as Traditional owners we know that the Tribunal is largely powerless to effect a meaningful mediated outcome. Groups which are led by professionally unconventional lawyers and who act independently of Representative Bodies and do not consult adequately with their neighbours have been provided with a system in which to flourish unchallenged, bide time and largely not respond to any calls to negotiate or mediate. It took the Bar-Barrum eight months to meet with the Dyirbal for the first time after the lodgement of their Claims No. 2-7, after repeated requests from the NQLCAC.

The Dyirbal find it rather frustrating where as a legitimate traditional owner group we waited for the thorough process of anthropological research to be conducted and that our entire involvement with Native Title so far is dealing with a loose cannon group who rapidly lodge claims over our country and who have not gone through thorough process but have achieved recognition by the NNTT as the traditional owners of our country. (Providing them with additional kudos to which they are not entitled and further disenfranchising Dyirbal people.) The Bar-Barrum are again currently negotiating with the State and Local Councils over our traditional country. The Dyirbal are locked out of the process because we have patiently waited for a more ethical and detailed approach to occur and finally to add further insult we are cast in public forums by the Bar-Barrum as a spurious group or not 'real' Dyirbal people.

It is correct that we are not a registered Native Title group, although as I have noted several times herein we have been attempting to participate in the Native Title process since August, 1999. Our claim over Dyirbal heartland country is currently undergoing the registration test and is now supported by a Connection Report completed by Dr Ben Smith, 30th April, 2003. Our claim has been funded by the North Queensland Land Council since September, 2001. The NQLCAC funds the employment of an in house lawyer and anthropologist and has funded the travel and accommodation of traditional owners to an authorisation meeting at Jumbun which was attended by descendants of approximately 20 major descent groups. It does not fund travel of traditional owners to mediation meetings with neighbouring groups nor any other Native Title matters and when such meetings are called; the NQLCAC only pays for catering costs and venue hire.

The Dyirbal people in accordance with NQLCAC policy have formed a working group. Although, NQLCAC policy recommends that this group consist of no more than seven members our working group consists of twenty-six people because it reflects a more traditionally representative model. Our claim includes thirty-eight major descent groups representing a conservative estimate of approximately 1200 Dyirbal people. The group of spokespersons who are permitted to speak on behalf of Dyirbal do not consist of one or two individuals who do all the talking. Dyirbal people who are chosen to represent us vary according to circumstance and which clan countries are involved, with old people always consulted and if our old people chose not participate in the process, they often nominate a member of their immediate family to represent them and speak on their behalf.

WHAT IS THE BAR-BARRUM CASE STUDY A MODEL FOR?

The Bar-Barrum should not be touted as a successful case model for Native Title, because they demonstrate that they achieve this outcome by asserting rights over other traditional owners' country. The Bar-Barrum like a number of other traditional owner groups who have legal representatives who

operate outside functioning Representative bodies achieve objectives by short cutting processes other traditional owners operating within Land Councils are required to undertake. The Dyrirbal are often painted by the Bar-Barrum as an illegitimate group of late comers who have no rights to the country we assert and identify as belonging to Dyrirbal people. This is a difficult charge to defend, particularly if ones own traditional owner group does not have a registered NT Determination claim or Determination. However, we now have a Connection Report which examines Dyrirbal peoples assertions and corroborates oral history with historical documents. We believe we are now in a position to withstand scrutiny in any forum or Court.

We see little justice or positive outcomes from Native Title and believe that traditional owner groups are often forced to engage in a process to defend their country against illegitimate claims. The Dyrirbal now spend a considerable amount of energy and resources defending our rights against the claims of Bar-Barrum and we are extremely perplexed as to why groups working outside of functioning Representative Bodies are painted as independent successful models of what can be accomplished under Native Title, when in fact they achieve these results by means which are less than thorough, assert claims that are unable to be substantiated and simply ignore many of the requirements other Aboriginal groups are required to undertake in accordance with the more stringent requirements of functioning Representative Bodies.

Our patience in waiting for our Connection report to be completed (21 months to complete) and our claim to be lodged with the Tribunal has ensured that all major Dyrirbal families are ensured representation and participation. Also in accordance with NQLCAC policy the Dyrirbal have agreed not to lodge overlapping claims over our country which is currently under claim by the Bar-Barrum people. Nor do the Dyrirbal wish to lodge overlapping claims as we believe that it is not the right way to proceed in getting our rights over our country recognised. We wish to behave honourably and respect the system established, although thus far it has been very much to our disadvantage. This is because we have chosen to place our hope in the mediation process undertaken firstly, by the North Queensland Land Council and the NNTT with Bar-Barrum. However, as you will come to read in this submission, we wonder if our decision to place such hope, in a flawed system, is well placed.

We ask can the Bar-Barrum under scrutiny, also assert such due diligence in the lodgement of their claims. They instruct their legal representatives to lodge claims on their behalf without ensuring that the listed claimant families are supportive of the claim. The Bar-Barrum Native Title Determination No. 1 included some Dyrirbal families who without their knowledge were identified as Bar-Barrum claimants - which they strongly say they are not. This has caused these families great distress because they have consistently asserted a strong Dyrirbal identity and have no genealogical connection to Bar-Barrum.

The Bar-Barrum are so ill informed about Native Title that throughout their first claim process they ordered non-indigenous people off their properties (a right that they do not have under Australian law) causing many of these people to become respondent parties to their claim. The choice made by the Bar-Barrum ensures that they remain uninformed about Native Title and has added further tension between Aboriginal and non-Aboriginal people in the region. The Bar-Barrum also attempted to charge other Aboriginal people a toll charge of \$10.00 to pass through Watsonville, because they believed it was their right because they had a registered Native Title application.

From the perspective of the Dyrirbal we see a system that permits groups like the Bar-Barrum to flourish unchallenged and largely undetected. If they operate outside the system where they do not have to consult with neighbouring groups as required by a Registered Representative body, they can principally do what they like and they appear to be doing so. They can consult in their own time and they have. The NQLCAC attempted to get the Bar-Barrum to meet with Dyrirbal, in relation to their current claims over Dyrirbal country for eight months. Since that time to they have made agreements with local councils over projects on Dyrirbal traditional country and have asserted rights over at least three other language groups in our region. Is this the model for Native Title that the Joint Committee on Native Title and the Aboriginal and Torres Strait Island Land Fund is looking for to promote as a case study with achievable outcomes?

Why does this occur? We have firstly a State and Federal legislation that effectively aims to ensure certainty for non-indigenous people at the disadvantage of traditional owners. State governments can slowly work through the process of recognising traditional owners rights, but groups like the Bar-Barrum who seek minimal traditional owner rights work quickly (six years) through the system because they are less of a threat to the certainty that the Native Title Act ensures for non-indigenous people. The Dyrirbal

have always insisted that despite the occupation of our land by non-indigenous people, we are still caretakers for our country. We have not relinquished our rights and our consistency in behaving honourably demonstrates our integrity not to further muddy a already confused system by lodging overlapping claims. It has taken Dyrirbal people almost four years to lodge a NT Determination Application.

RECENT MEDIATION MEETING BETWEEN BAR-BARRUM AND DYIRBAL:

On the 17th April, 2003 the Bar-Barrum met at Ravenshoe CWA Hall to discuss the matter of their overlapping claims over Dyrirbal country. No legal representatives of either groups were present. The NQLCAC was represented by Dr Ross Pearson, Michael Southon (Co-ordinating In-House Anthropologist) and field officer Barry Weare. Mr John Wason and Mr Tom Congoo were the only representatives of the Bar-Barrum people present. Bar-Barrum first attempted to say that they would not meet with the Dyrirbal people present having declared us as, 'not proper Dyrirbal people'. However, after some initial tension, the Bar-Barrum representatives agreed to a number of outcomes as listed:

1. To withdraw all their claims over Dyrirbal country up to the watershed of the Great Dividing Range;
2. To amend their registered claims with the assistance of the NQLCAC;
3. Agree to the employment of an independent anthropologist to be engaged by NQLCAC to examine the connection reports of the Bar-Barrum and Dyrirbal people and agree to the findings of the anthropologist;
4. Dyrirbal people agreed not to lodge a claim over our land until the findings of independent anthropologist were released;
5. Both Dyrirbal people and Bar-Barrum agreed to accept the findings of the independent anthropologist;
6. The NQLCAC offered to appoint an in-house anthropologist and lawyer to assist the Bar-Barrum people;
7. The Bar-Barrum wanted to have a meeting with their mob to present the above agreed outcomes and the NQLCAC agreed to fund the authorisation meeting.

Some days later the NQLCAC were informed by the Bar-Barrum that they wished to withdraw this. Mr John Wason indicated that no authorisation meeting was required by the Bar-Barrum and now he claims they "felt pressured" and are not going to alter their claims. Despite our best efforts in meeting with them, they have gone back on their original intransigent position.

OBJECTIVE OF THE JOINT ENQUIRY:

Essentially, your Joint Enquiry attempts to examine the effectiveness of the Native Title and the role played by the Tribunal. However, there are many other parties involved in this process as discussed herein. When correspondence was sent to the NNTT office Cairns outlining the Dyrirbal peoples frustration with the registration of subsequent claims over Dyrirbal country by the Bar-Barrum we have had little relief or respite from the consequences of this registration. (see Appendix 4) The NNTT has responded and their solution is to provide a Member to chair a mediation meeting between Dyrirbal and Bar-Barrum (see Appendix 5,6). The proposed mediation meeting with the NNTT Member, Mr Geoff Clark does not hold much promise for us as we believe the Bar-Barrum can continue to disregard or withdraw any agreement they make in the presence of Dyrirbal people. If this meeting fails, the Federal Court has appointed an independent legal mediator, David Robson and we hope that some final resolution to the mess which we have lived will end and we can begin to focus on a future for the Dyrirbal.

The Tribunal is rather powerless to mediate outcomes and many Aboriginal groups in similar circumstances like to Bar-Barrum appear to know this and are not moved to stop the process they have committed themselves to.

If this enquiry can ensure a fairer system for Aboriginal groups who conform to the process by a tighter Registration Process, a more effective Tribunal that allows a review process to ambit claims that can also plug the apparent loop holes which make it so attractive for unscrupulous Aboriginal and legal representatives to flourish, creating chaos for traditional owner groups who are powerless under this current system to defend their country. The system also needs to ensure that when Representative Bodies are not functioning effectively, that disenfranchised Aboriginal groups have an identifiable mechanism to seek recourse.

Please find enclosed the following appendices as listed:

Appendix 1:

Copy of prepared Native Title Determination Application by Mr Peter Poynton c. July, 1999.

Appendix 2:

Copy of a handwritten agreement between Dyrirbal [aka Jiddabul] elders and Bar-Barrum elders in Innisfail on the 6th April, 2001.

Appendix 3:

Copy of statement by Dr Paul Memmott proposed for the Federal Court. Distributed to the National Native Title Tribunal and the North Queensland Land Council in April, 2001.

Appendix 4:

Copy of letter from Carroll Go-Sam [unsigned], Spokesperson for Dyrirbal Native Title Working Group to Stephen Ducksbury, National Native Title Tribunal.

Appendix 5:

Copy of letter from Stephen Keating, Case Manager, Cairns. Dated 25th March, 2003.

Appendix 6:

Copy of letter from Stephen Keating, Case Manager, Cairns. Dated 4th April, 2003.

With due respect,

Carroll Go-Sam,
Spokesperson for Dyrirbal Native Title Working Group.

APPENDIX 1:

PREPARED NATIVE TITLE DETERMINATION APPLICATION FOR THE JIDDABUL PEOPLE BY PETER POYNTON

FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

Federal Court Office Use

File Number: _____

Date Filed: _____

Registry: _____

Judge Allocated: _____

Review Hearing Date: _____

Paragraph 5(1)(a)

Form 1

Native Title Act 1993
Native Title Determination Application
Claimant Application

APPLICATION

Jiddabul People

Filed By:

Name:

Address:

DX:

Tele:

Fax:

Ref:

Form 1 - Claimant's Determination Application (January 1999)

PETER POINTON

90313495

NOLC
meeting

Shaan Gerard

Form 1

Native Title Act 1993
Native Title Determination Application
Claimant Application

Note 1 This form is to be used for an application mentioned in subsection 61 (1) of the Act for a determination of native title in relation to an area for which there is no approved determination of native title.
Note 2 Section 62 of the Act requires this application to be accompanied by an affidavit sworn by the applicant. Please refer to back of application form.

NAME OF APPLICANT(S)

Mr Warren Woods, Ms Dorothy Mitchell, Ms Maisie Barlow, Ms Maureen McPherson
James Moran

PART A

DETAILS OF THE CLAIM

1

The applicant applies for a determination of native title under subsection 61(1) of the Native Title Act 1993.

2

AUTHORISATION

The applicant is entitled to make this application as:

Capacity in which the applicant claim: to be entitled to make the application, eg: a person authorised by the native title claim group to make the native title determination application: see Act, s 61 (1).

The Jiddabul People have authorised this application according to Jiddabul tradition and custom

3

The schedules to this application contain the following information:

2

SCHEDULE A NATIVE TITLE CLAIM GROUP [see Act, s 61]

The names (including Aboriginal names) of the persons (the *native title claim group*) on whose behalf the application is made or a sufficiently clear description of the persons so that it can be ascertained whether any particular person is 1 of those persons.

The Jiddabul People are the descendants of Moran

~~Joseph & Mabel Mitchell~~
~~Rose and Sambo Gardner~~

~~Woods~~

Freemans

main families

King Sandy - Maynard family

More information can be provided and labelled as "Attachment A"

if King Sandy had brothers

who were the mother & dad



right after bridge

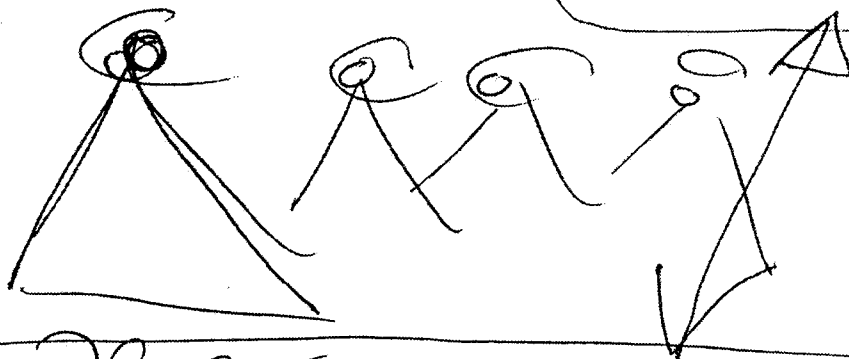
go on ->

Willie Mexina Waroona Rd - part it

↳ Inniskil

next

Q: WHO ARE THE ABIGAL ANCESTORS OF JIDDABUL?



PROBLEM : WHO ARE THE

PEOPLE JIDDABUL ARE

DESCENDED FROM

→ ABIGAL ANCESTORS

DOES CAROL GOSMAN HAVE THIS INFO??

SCHEDULE B**IDENTIFICATION OF BOUNDARIES** [see Act, s 62]

Note: This information must be included, as well as the map mentioned in SCHEDULE C

Information identifying the boundaries of:

- a) the area covered by the application; and
 b) any areas within those boundaries that are not covered by the application.

511 FTY 1368	29 CWL 431 RE	68 CWL 3165 RE
249 CWL 650	48 CWL 3561 RE	308 CWL 2530 RE
245 FTY 1141	307 CWL 2908RE	192 FTY 439 NP
438 FTY 1575	488 FTY 1421	0157??? CWL 3657
251 FTY 1618	101 NPW 351	

It is duly noted that "the native title rights and interests claimed are subject to the laws of the state and commonwealth generally and to any other valid acts of adverse dominion."

The application excludes:

- Dedicated roads
- Dedicated Road reserves
- Creeks or rivers dedicated to the State of Queensland.
- Valid grants of freehold land or water
- other scheduled interests,
- a commercial lease that is neither an agricultural lease nor a pastoral lease
- an exclusive agricultural lease or exclusive pastoral lease
- a residential lease,
- a community purpose lease,
- any lease other than a mining lease that confers exclusive possession over particular lands or waters.
- What is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to "1 January 1994" were instead a reference to "24 December 1996"
- Any area covered by a valid construction or establishment of any public works where the establishment or construction of the public work commenced on or before 23 December 1996.

information can be provided and labelled as "Attachment B"

SCHEDULE C **MAPS** [*See Act, s 62*]

A map showing the boundaries of the area covered by the application.

MAPS ATTACHED

SCHEDULE D **SEARCHES** [*See Act, s 62*]

Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.

It has not been possible to carry out a tenure history search on these lots.

More information can be provided and labelled as "Attachment D"

SCHEDULE E

DESCRIPTION OF NATIVE TITLE RIGHTS AND INTERESTS [See Act, s 62]

The description must not consist only of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

A description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests).

It is duly noted that "the native title rights and interests claimed are subject to the valid laws of the state and commonwealth generally and to any other valid acts of adverse dominion."

The Jiddabul People are entitled to use, enjoyment and occupation of their lands and waters, in the case of some of the parcels in this application, their rights co-exist with the holders of other rights and interests in the land. That is to say that they do not claim exclusive possession.

Discharge cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities on, in relation to, and concerning the native title land including to:

- (i) preserve sights of significance to the native title holders and other Aboriginal people on the native title land;
- (ii) determine, give effect to, pass on, and expand the knowledge and appreciation of their culture and tradition;
- (iii) regard the native title land as part of the inalienable attachment of the native title holders to the native title land and ensure that the use of the native title land is consistent with that attachment;
- (iv) maintain the cosmological relationship, beliefs, practices and institutions through ceremony and proper and appropriate custodianship of the native title land and special and sacred sites, to ensure the continued vitality of culture, and the well-being of the native title holders;
- (v) inherit, dispose of or confer native title rights and interests in relation to the native title land on other in accordance with custom and tradition;
- (vi) determine who are the native title holders;
- (vii) resolve disputes in relation to the native title land.

2. Establish residences on the native title lands

3. Determine use rights in relation to activities which may be carried out by others on the native title land including the right to grant, deny or impose conditions in relation to activities which may be carried out on the native title land.

3.1 Exercise and carry out economic life (including by way of barter) on the native title lands including to hunt, fish and carry out activities on the native title land, including the creation, growing production or harvesting of natural resources.

4. Have access to and use of the natural resources of the native title land including the right to:-

- i) maintain and use the native title land;
- (ii) conserve the natural resources of the native title land;
- (iii) safeguard the natural resources of the native title land for the benefit of the native title holders;
- (iv) manage the native title land for the benefit of the native title holders;
- (v) use the natural resources of the native title land for social, cultural, economic, religious, spiritual, customary and traditional purposes.

More information can be provided and labelled as "Attachment E"

SCHEDULE F

GENERAL DESCRIPTION OF NATIVE TITLE RIGHTS AND INTERESTS CLAIMED [See Act, s 62]

A general description of the native title rights and interests claimed and, in particular, the factual basis on which it is asserted that:

- (a) the native title claim group has, and the predecessors of those persons had, an association with the area; and
- (b) there exist traditional laws and customs that give rise to the claimed native title; and
- (c) the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

Affidavits of

Mr Warren Woods
Ms Bessie Herbert
Ms Maizie Barlow
Ms Lizzie Woods

Attachment "F"

More information can be provided and labelled as "Attachment F"

The facts in these affidavits
will support the rights
claimed in schedule "E"

SCHEDULE G ACTIVITIES [See Act, s 62]

Details of any activities in relation to the land or waters currently being carried out by the native title claim group.

Applicants and members of the claimant group regularly collect wood products and foodstuffs in the claim area.

Claimants care for country in claim area and remain custodians of the significant sites in this country.

Jiddabul Children and young people are taken to country to learn about their culture and history.

The claimants access this land to maintain their livelihood. Many of the claimants live in the area claimed in Ravenshoe and surrounds.

More information can be provided and labelled as "Attachment G"

SCHEDULE H DETAILS OF ANY OTHER APPLICATIONS [See Act, s 62]

Details of any other applications to the High Court, Federal Court, or a recognised State/Territory body, of which the applicant is aware, that have been made in relation to the whole or a part of the area covered by the application and that seek a determination of native title or a determination of compensation in relation to native title.

NOT APPLICABLE *

More information can be provided and labelled as "Attachment H"

SCHEDULE I **DETAILS OF ANY SECTION 29 NOTICES** [See Act, s 62]

Details of any notices under section 29 of the Act (or under a corresponding provision of a law of a State or Territory), of which the applicant is aware, that have been given and that relate to the whole or a part of the area.

There are no s.29 notices issued as yet over the area claimed.

More information can be provided and labelled as "Attachment I"

SCHEDULE J **DRAFT ORDER** [See Act, s 62]

A draft of the order to be sought if the application is unopposed.

The Jiddabul People have the right to occupy, enjoy, and use the determination areas in accordance with and subject to their traditional laws and customs, and subject to the co-existing rights and interests of any statutory title holders.

In particular the Jiddabul People have the right to:

- (A) live on and build structures upon the determination area
- (B) conserve the natural resources of the determination area for the benefit of the common law holders
- (C) maintain, use and manage the determination area for the benefit of the native title holders but in co-operation with co-existing statutory title holders rights and interests, that is:
 - (i) maintain and protect sites of significance to the common law holders.
 - (ii) inherit dispose of or give native title rights and interests to others
 - (iii) decide who are the native title holders
 - (iv) regulate and resolve dispute amongst the common law holders in relation to the rights of possession, occupation and enjoyment of the determination area
 - (v) conduct social, religious, cultural and economic activities of the determination area.
- (D) Conserve and use the natural resources of the determination area for social, cultural, economic, religious, spiritual, customary and traditional purposes and
- (E) make decisions about and to control, in co-operation with and subject to the co-existing statutory title holders' rights and interests, access to, and the use and enjoyment of, the determination area and its natural resources.

More information can be provided and labelled as "Attachment J"

SCHEDULE K **NATIVE TITLE REPRESENTATIVE BODIES** [See Act, s 62]

The name of each representative Aboriginal/Torres Strait Islander body for the area covered by the application.

NORTH QUEENSLAND LAND COUNCIL ABORIGINAL CORPORATION

More information can be provided and labelled as "Attachment K"

SCHEDULE L

TENURE AND LAND USE ISSUES [see Act, ss 47, 47A, 47B and 61A]

For the area covered by the application, details of:

- a) any area for which a pastoral lease is held by or on behalf of the members of the native title claim group; and
- b) any area leased, held or reserved for the benefit of Aboriginal peoples or Torres Strait Islanders that is occupied by or on behalf of the members of the native title claim group; and
- c) any vacant Crown land occupied by the members of the native title claim group; and
- d) any area mentioned in paragraph (a), (b) or (c) over which the extinguishment of native title is required by section 47, 47A or 47B of the Act to be disregarded.

NOT APPLICABLE

More information can be provided and labelled as "Attachment L"

The following items are not required, but will be relevant when the Native Title Registrar considers the claim for registration under section 190A of the Act.

SCHEDULE M **TRADITIONAL PHYSICAL CONNECTION** [See Act, s 62]

Details of any traditional physical connection with any of the land or waters covered by the application by any member of the native title claim group.

See affidavit in
"Attachment F"

More information can be provided and labelled as "Attachment M"

SCHEDULE N **PREVENTION OF ACCESS** [See Act, s 62]

Details of the circumstances in which any member of the native title claim group has been prevented from gaining access to any of the land or waters covered by the application.

Not applicable

More information can be provided and labelled as "Attachment N"

SCHEDULE O MEMBERSHIP OF ANY OTHER NATIVE TITLE GROUPS [see Act, s 190C]

Details of the membership of the applicant or any member of the native title claim group in a native title claim group for any other application that has been made in relation to the whole or part of the area covered by this application.

None of the claimant group are included in any overlapping application.

More information can be provided and labelled as "Attachment O"

SCHEDULE P CLAIMS FOR EXCLUSIVE POSSESSION OF OFFSHORE PLACES [see Act, s 190B]

Details of any claim by the native title claim group of exclusive possession of all or part of an offshore place.

The applicants do not claim exclusive possession of any offshore place.

More information can be provided and labelled as "Attachment P"

SCHEDULE Q CLAIMS TO ANY RESOURCES OWNED BY THE CROWN [see Act, s 190B]

Details of any claim by the native title claim group of ownership of minerals, petroleum or gas wholly owned by the Crown.

The applicants do not claim ownership of minerals, petroleum or gas wholly owned by the Crown

More information can be provided and labelled as "Attachment Q"

SCHEDULE R

CERTIFICATION OR AUTHORISATION [see Act, s 190C]

(1)

If the application has been certified by each representative Aboriginal/Torres Strait Islander body, a copy of the certificate.
Not applicable

(2)

Note For the meaning of authorize, see the Act, s 251B

If the application has not been certified by each representative Aboriginal/Torres Strait Islander body:
a) a statement that the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group; and
b) the grounds on which the Registrar should consider that the above statement is correct.

Affidavits of

Mr Warren Woods, Ms Dorothy Mitchell, Ms Maisie Barlow, Ms Maureen McPherson
James Moran

Attachments "R"

More information can be provided and labelled as "Attachment R"

SCHEDULE S

AMENDED APPLICATIONS [See Act, s 64]

If the application is an amended application, details of the difference between this application and the original application.

NOT APPLICABLE

More information can be provided and labelled as "Attachment S"

AUTHORISATION

MODEL
AFFIDAVIT -

— TO BE DONE AFTER

the JIJDABUL MEETINGS

THAT AUTHORIZES THIS
APPLICATION.

14

PARAGRAPH 6

IN THE FEDERAL COURT OF AUSTRALIA)
BRISBANE DISTRICT REGISTRY)
GENERAL DIVISION)

Between:

MODEL

JIDDABUL PEOPLE

APPLICANTS

And:

STATE OF QUEENSLAND

RESPONDENT

AFFIDAVIT OF WARREN WOODS

I, WARREN WOODS of 9 Lydia Street, Ravenshoe, in the State of Queensland make oath and say as follows:

1. I am a Jiddabul man through my parents Lizzie and Jack Woods).

2. Amongst the Jiddabul People, there is a process of decision-making that must be complied with when members of the Jiddabul People want to speak up for country. This process is a traditional and customary way of dealing with land business.

is this correct?

The Elders of the Jiddabul People and the heads of families consult amongst themselves and their relatives and reach a consensus about how the Jiddabul will approach an issue.

?

The Jiddabul people have authorised this application and Warren Woods, Ms Dorothy Mitchell and Ms Maisie Barlow, Ms Maureen McPherson and Mr James Moran are authorised to be the applicants.

o

The traditional decision-making process that must be complied with when decisions about land affecting the Jiddabul People are to be made have been complied with. Our elders and heads of families have conducted discussions and meetings that comply traditional and customary ways of our people that allow us to authorise this application.

SHEET ONE

DEPONENT

Solicitor/Justice of the Peace

AUTHORISED ATTORNEY

On xx day in Larnahwe to J.P.
met & agreed to actions this application

XXX, description of dates of discussions and/or meetings. ?

All the facts and circumstances deposed in this my affidavit are within my own knowledge, except those which are deposed to from information only, and the means of my knowledge and sources of my information appear on the face of this my affidavit.

Sworn by **WARREN WOODS**)
At in the)
State of Queensland, this day of)
May 1999, before me:)

Solicitor/Justice of the Peace

if meetings
when??
=

SCHEDULE T

ANY OTHER RELEVANT INFORMATION [See Act, s 62]

Any other relevant information that the applicant wants to provide.

More information can be provided and labelled as "Attachment S"

Signature of the applicant or applicant's solicitor

Date

YOU MIGHT HAVE
SOME ANTHROPOLOGY?

~~\$40,000~~

PART B

FILING AND SERVICE

IF THE APPLICANT IS REPRESENTED:

APPLICANT'S REPRESENTATIVE

This application is filed by:
Terry Fisher & Co

ADDRESS FOR SERVICE

Whose address for service is:
PO Box 5409

Suburb

West End

State/Territory

QLD

Postcode

4101

E-mail

Fisher@powerup.com.au

Telephone (during the day)

07-38465399

Facsimile

07 - 38465899

This application is filed for

The Jiddabul People - ~~Vincent Munday~~

Applicant's address

~~C/- Post Office Yarrabah,~~

Suburb

Yarrabah

State/Territory

QLD

Postcode

4871

APPENDIX 2:

HANDWRITTEN AGREEMENT BETWEEN DYIRBAL [AKA JIDDABUL] ELDERS AND BARBARRUM ELDERS IN INNISFAIL ON THE 6TH APRIL, 2001.

Fax - 33654744

Page 1 of 2

Agreement on Boundaries Between Jiddabul and BarBarrum Elders ZanisLail 6 April 2001

- Jiddabul Traditional Country is to the East of the Great Divide and extends to the middle of the ridge of the Great Divide
- The BarBarrum claim will be allowed to go forward to determination without formal amendment and in its current form
- BarBarrum recognises that the following lots currently claimed are Jiddabul Country

Lot 85	UJL 39 412
Lot 72	UJL 39 296
Lot 60	" "
Lot 73	" "
Lot 12	" "
Lot 16	" "

J.C.

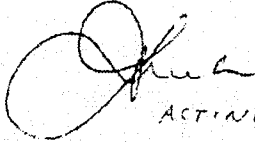

It is agreed that all descriptions to be made about the abovenamed lots will be made by Jiddabul and that if BarBarrum receive any notices about the same they will advise Jiddabul and in respect of any matters concerning the same will act in accordance with Jiddabul instructions

Following the BarBarrum determination the said allotments will be handed back to the Jiddabul

Barbarrum will take all steps necessary to effect a hand back of the said allotment to Jiddabul.

William Masina	W M
Tom Largo	Largo
Lizzal Wood	X
John Wason	John

Witness

 (J. K. V. C.) 6/4/01
ACTING F. O. N. C. C.

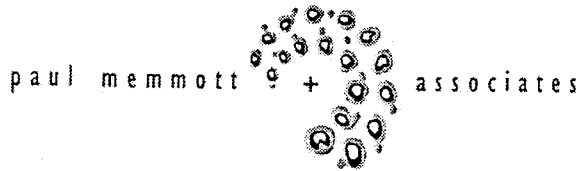
Paul Car please ring me on 07 4096288

Betty

07 40962888

APPENDIX 3:

CORRESPONDENCE FROM DR PAUL MEMMOTT DISTRIBUTED TO THE NNTT AND NQLCAC



11/4/01

TO WHOM IT MAY CONCERN

RE: BAR-BARRUM - JIRDABAL N.T. MATTER

To the best of my knowledge:-

1. The Jirdabal group (aka Jiddabal, Dyirrbal) has had no legal representation in this matter until today when pro bono services were procured.
2. The Jirdabal group have never been effectively informed that the Bar-barrum claim extended over what the Jirdabal believe is their tribal area, until about two weeks ago.
3. For this reason the Jirdabal never became a party to the Bar-Barrum N.T. claim. Nor has this option been offered to them by NQLC in the last two weeks.
4. In 2000 the Jirdabal group had sought assistance from NQLC to (a) fund anthropological research into this territorial boundaries, their group membership (genealogies) and their native title rights, and (b) to engage a solicitor. Funding has not been forthcoming. Mr Poynton was Executive Officer of NQLC at this time.
5. The Jirdabal are prepared to negotiate with the Bar-barrum and other parties over this matter.
6. Jirdabal Elders have indicated their territory includes the Wild River Valley, including Dry River, Coolgarra, Silver Valley and Herberton area.
7. The Jirdabal need an extension of time to engage as a party to the claim, carry out internal consultation and to seek funding for same.

Consultant

Architects and

Anthropologists

in Aboriginal

Projects

DR PAUL MEMMOTT

Arch (Hons), Ph.D. (Qld), ERA/LA

Assoc. Prof

Associate Professor Dr Paul Memmott
Anthropologist to the Jirdabal

MAILING ADDRESS

PO Box 114, St Lucia, Q 4067

TELEPHONE

(07) 3365 3660

FACSIMILE

(07) 3365 4744

EMAIL

p.memmott@mailbox.uq.edu.au

APPENDIX 4:

COPY OF LETTER [UNSIGNED] FROM CARROLL GO-SAM, SPOKESPERSON FOR DYIRBAL
NATIVE TITLE WORKING GROUP TO THE NNTT OFFICE IN CAIRNS

Spokesperson,
Carroll Go-Sam,
Dyirbal Native Title Working Group,
PO BOX 6114,
ST LUCIA QLD 4067
Email: carrollgosam@hotmail.com

20th March, 2003

Cairns Regional Manager,
Stephen Dicksbury,
National Native Title Tribunal,
Level 30,
MLC Building,
239 George Street,
BRISBANE QLD 4001

IN STRICTEST CONFIDENCE NOT TO BE CITED OR USED WITHOUT THE PERMISSION OF THE AUTHOR

Dear Stephen,

Dyirbal people note that on the 12th March, 2003 that the Barabaram Claims Nos 4,5,6 and 7 have been notified. The application of Barabaram Claim Nos: 2-7 were lodged with NNTT in Cairns some time last year, several months after Dyirbal intervention in the Federal Court determination of the Barabaram Claim No. 1 in June, 2001. This intervention occurred because country belonging to Dyirbal was included in the area claimed by Barabaram (see further below). Dyirbal people strongly assert that Barabaram Claim Nos. 2, 3 and 7 are over Dyirbal country.

The Dyirbal people are highly concerned that the Tribunal has registered subsequent claims by Barabaram, considering Dyirbal had several allotments located in Dyirbal country removed from the Barabaram Native Title Determination Claim No. 1 prior to determination in August, 2001.

We are also aware that staff at the NNTT were briefed in 2001 about Dyirbal assertions that Barabaram were claiming a large section of our traditional country, yet subsequent Barabaram claims over Dyirbal country were registered. The Dyirbal note that the former case manager for Barabaram and Dyirbal, Amy Barrett had discussions with myself about the Court Hearing and the circumstances surrounding Dyirbal peoples objection to the Determination of Barabaram Claim No. 1 by the Federal Court. The Native Title Tribunal also received correspondence from our appointed anthropologist at the time, Paul Memmott who informed the Tribunal, including Ms Barrett of Dyirbal assertion of traditional ownership.

The Native Title Tribunal office in Cairns also holds a copy of an illegal agreement between Dyirbal and Barabaram, whereby our old people were led to believe that Barabaram were in a position to 'hand back' allotments in country belonging to Dyirbal. In this Agreement Barabaram elders 'signed off' as saying that they acknowledged the lots were in Dyirbal territory.

On the receipt of this document at my office in 2001, the Dyirbal people sought assistance from the North Qld Land Council to fund a lawyer to raise objections to the Determination and a stay of matters until it was resolved to the satisfaction of Dyirbal people. The NQLCAC refused to provide any assistance and Dyirbal then sought the services, pro bono of Phillip Hunter.

The following lots removed from Barabaram Determination Application on the 24th April, 2001 are as follows:

- Lot 85, USL 39412 [renumbered AP 5947 Lot 2]
- Lot 72, USL 39296
- Lot 60, USL 39296
- Lot 73, USL 39296
- Lot 12, USL 39296
- Lot 16, USL 39296

The subject of extended negotiations between Dyrirbal and Barbaram legal representative, Mr Terry Fisher were that Dyrirbal were seeking further lots to be removed and these are as follows:

- Lot 2 on AP 5947 (formerly Lot 40 on USL 39412)
- Lot 5 on USL 39311
- Lot 5 on USL 39301
- Lot 29 on USL 39301
- Lot 20 on USL 39311
- Lot 5 on CWL3515 and
- Lot 20 on USL 39311

The above allotments and possibly others now form a large component of the recently registered Barbaram Claim No. 7.

Despite the illegal nature of the signed agreement, it provides evidence that the Barbaram people and their legal representatives were willing to proceed to determination without removing the allotments identified as belonging to Dyrirbal people in this agreement. The agreements content and wording reflects the position that Dyrirbal people strongly assert rights to country east of the watershed of the Great Dividing Range. In fact, one of the principal claimants, Tommy Congoo visited one of our senior old people, Willy Masina at least five times prior to and during the lodgement of Barbaram's application seeking information where Dyrirbal country was and the extent of Barbaram country. Every time he returned he presented Willy Masina with a different scenario, 'we won that country in a war against Dyrirbal', 'Dyrirbal live on one side of the Wild River and Barbaram on the other'. Each time Willy Masina corrected him, saying 'you cannot win country by war, what you have is given to you by old people. What is given to you is yours for all time, it cannot be taken or given away to anyone who does not have a right to it. He further told him, a river can't be boundary between two different mobs because a river is important for living, hunting, washing, drinking. You can't have one mob on one side and another mob on the other. Mullenbara (river bed people) live on both sides of the river.

Tommy Congoo was consistently told by Willy Masina that Barbaram do not share language or law with Dyrirbal. The main division boundary between people belonging to country to the west and Dyrirbal and its neighbours is marked by the watershed of the Great Dividing Range. Water flowing to the west and to the Gulf belongs to those people over the range, who were not identified by Willy Masina. Water flowing to the east into the Wild River, Herbert River, Tully River and Millstream belongs to Dyrirbal. There are other clear and specific boundaries between Dyrirbal and groups it shares language and law.

The illegal Agreement signed on the 6th April, 2001 by Barbaram claimants, Mr John Wayson and Mr Tommy Congoo and Dyrirbal old people; Lizzie Woods, Willy Masina, Lillian Freeman (Dyrirbal people who do not read or write) is worded as follows, "Jiddabul Traditional country is to the east of the Great Divide and extends to the middle of the ridge of the Great Divide.

The agreement also states the following, "Barbaram recognises that the following lots currently are Jiddabul country:

- Lot 85 USL 39412
- Lot 72 USL 39296
- Lot 60 USL 39296
- Lot 73 USL 39296
- Lot 12 USL 39296
- Lot 16 USL 39296"

The agreement further states that,

"The Barbaram claim (referring to Native Title Determination Claim No. 1 by Barbaram people) will be allowed to go forward to determination without formal amendment and in its current form.... It is agreed that all decisions to be made about the abovenamed lots will be made by Jiddabul and that if Barbaram receive any notices about the same they will advise Jiddabul and in respect of any matters concerning the same and will act in accordance with Jiddabul instructions.

Following the Barbaram determination the said allotments will be handed back to the Jiddabul.

Barbaram will take all steps necessary to effect a hand back of the said allotments to Jiddabul."

The meeting on the 6th April, 2001 was attended by the Barbaram legal representative, Mr Peter Poynton (Terry Fisher was not present) and staff of the North Queensland Land Council. Although, to my knowledge, Mr Poynton was not in the room when the agreement was signed.

Dyirbal have also been informed, both prior to and after the application of Barbaram Claims Nos 2-7, that the North Queensland Land Council undertook to inform the National Native Title Tribunal in several meetings that Barbaram were operating outside the Representative Body. They were also informed by NQLCAC that the subsequent applications over Dyirbal country were improper. Why then with knowledge of the history between Dyirbal and Barbaram was this not taken into consideration by the Tribunal which has subsequently registered these claims over Dyirbal country?

The Dyirbal people are rather frustrated with the Tribunal's bureaucratic position which states that, Tribunal staff are simply required to make a prima facie decision based on the application before them; that the registration test is not onerous and therefore they are obligated to register claims by groups who assert ownership over another groups country because this information is not presented in the prima facie application. The NNTT staff say, its position is that we are not here to decide who and who isn't a traditional owner and whether or not these groups are claiming country belonging to them or not. The Tribunal fixed in this established position, can further demonstrate that they have fulfilled their obligations under the Act. This is a cop-out! The consequences now faced by Dyirbal, are such that, as the legitimate Native Title claimant group we have to expend considerable energy to get our voice heard as the only ones who can speak for our country. But because Dyirbal are NOT recognised as the Registered Native Title group; our position is diminished in the eyes of the National Native Title Tribunal, the Federal Court, government agencies, local government etc etc.

The argument that the Tribunal is required only to make a decision based on the prima facie information before them is a fundamental part of the problem Native Title faces throughout Australia. The Tribunal by forwarding this argument admits that we have no further obligation but to read the application before us and even if there may be records on Tribunal files that challenge the application, or may influence us to rethink how we execute our duty, we do not have to access these files. Groups like Barbaram thrive in an environment where they can work effectively outside poorly resourced Native Title Representative Body; combined with a statutory body, limp in its fulfilment of its duties. The Tribunal can further argue that we do not even have to familiarise ourselves with the region where the Native Title Application is being lodged, because that information does not come under the auspices of 'prima facie' information.

Groups like Barbaram who appear to have previously conformed to the requirements of the Native Title process are not closely reassessed in subsequent applications and appear to sail smoothly through Tribunal procedures without scrutiny.

I would call this a system of 'arm chair' decision making, whereby the assessor is required to make decisions devoid of any other stimuli; the analogy being that the decision maker for registration of a claim can justify acceptance for registration on the basis that he or she is not required to seek external information, even if it exists, other than what is written on an application.

An unfortunate obvious oversight or mismanagement of the NNTT process is that Dyirbal people were not informed by our Representative Native Title body that we had an opportunity to seek to get the claims by the Barbaram people struck out. Particularly, on the basis that in the Agreement on 6th April, 2001 Barbaram are acknowledging they are claiming country belonging to Dyirbal. The current Dyirbal legal representative, an employee of NQLCAC, who was employed after the events of 6th April, was not aware of the Agreement between Dyirbal and Barbaram until recently. How are Dyirbal to obtain some satisfaction from a system that is NOT negotiated or executed expertly by non-indigenous people leading the process?

So where do Dyirbal go from here? Currently, Dyirbal people have Barbaram people speaking for our country, making decisions about what happens in our country and the Dyirbal voice is not recognised because we are not registered Native Title Claimants. We have, on the legal advice that has been given us, chosen not to register overlapping claims. However, many Dyirbal are keen to pursue this option, although, we have been told if we choose the path of lodging an overlapping claim, it will be without

assistance from the NQLCAC. Although, Dyirbal have become a registered party to Barabaram Claims Nos 2-3, Barabaram have so far cancelled one meeting after another with Dyirbal and refused to meet with us for eight months. Dyirbal by our conformity and subscription to the Native Title system are disadvantaged because of our compliance. Whereas groups like Barabaram flourish working outside the prescribed system negotiated by their legal representatives on their behalf.

Delaying meetings with the Dyirbal advantages the Barabaram position because they can continue speaking for our country, enjoying the meagre benefits of doing so, whilst ignoring a process where Dyirbal can officially confront the illegitimacy of their claims. Who is going to help us sort out this mess we are now burdened with?

I request that the Tribunal take a more proactive role in assisting Dyirbal and the North Queensland Land Council to sort out this situation with Barabaram. Barabaram demonstrate no conformity to the procedural steps required by the Native Title process. They appear to not want to conform to the Policies of the NT Representative Body and seem to pay no attention to NQLCAC requests for meetings with Dyirbal.

The Dyirbal seek the assistance of the Tribunal to make its voice heard within your own bureaucracy and to ask that the Tribunal have a closer working relationship with functioning Land Councils. We further ask that the Tribunal takes the lead in mediating matters between Dyirbal and Barabaram in order to obtain their withdrawal of all claims over country belonging to Dyirbal. Dyirbal will vigorously seek, if it has the means and assistance to do so, to have all claims over Dyirbal country by Barabaram struck out.

Hoping some positive resolution to this matter can occur.

With due respect,

Carroll Go-Sam,
Spokesperson for Dyirbal Native Title Working Group.

Cc: Ross Pearson, North Queensland Land Council

APPENDIX 5:

CORRESPONDENCE RECEIVED FROM THE NNTT 25th MARCH,



NATIONAL NATIVE TITLE TRIBUNAL

Cairns Corporate Tower PO Box 9973, CAIRNS QLD 487
Level 14 15 Lake Street Telephone: (07) 4048 1500
CAIRNS QLD 4870 Facsimile: (07) 4051 3660
AUSTRALIA Website: www.nntt.gov.au

25 March 2003

Reference: QC03/1 / QC01/32

Carroll Go-Sam
Spokesperson
Dyirbal Native Title Working Group
P.O. Box 6114
ST LUCIA QLD 4067

Dear Carroll

Dyirbal and Bar Barrum Native Title Determination application

I thank-you for your letter dated 20 March 2003 outlining the concerns of the Dyirbal regarding the recent Bar-Barrum Native Title applications. I have provided a copy of your correspondence to the National Native Title Tribunal Member for the Bar-Barrum claims who I am sure, will take the concerns of the Dyirbal people into consideration.

Further to your request for assistance to resolve any Dyirbal – Bar-Barrum matters, the North Queensland Land Council have advised that a meeting is scheduled for Thursday 17 April 2003 in an attempt to resolve these issues. In correspondence with the North Queensland Land Council I have been advised that National Native Title Tribunal assistance will be requested in the event that the meeting is unsuccessful.

Thank-you once again for raising your concerns with the National Native Title Tribunal. If you require any further information, please do not hesitate to call me on (07) 4048 1505.

Yours sincerely

Steven Keating
Case Manager

Tel: (07) 4048 1505
Fax: (07) 4051 3660
Email: stevenk@nntt.gov.au

FOR MORE INFORMATION, PLEASE CONTACT FREECALL 1800 640 501

APPENDIX 6:

CORRESPONDENCE RECEIVED FROM THE NNTT 4th APRIL, 2003



NATIONAL NATIVE TITLE TRIBUNAL

Cairns Corporate Tower PO Box 9973, CAIRNS QLD 48
Level 14 15 Lake Street Telephone: (07) 4048 1500
CAIRNS QLD 4870 Facsimile: (07) 4051 3660
AUSTRALIA Website: www.nntt.gov.au

4 April 2003

Reference: QC03/1/QC01/35

Carroll Go-Sam
Spokesperson
Dyirbal Native Title Working Group
P.O. Box 6114
ST LUCIA QLD 4067

Dear Carroll

Dyirbal and Bar Barrum Native Title Determination application

Further to our correspondence dated: 25 March 2003 in relation to your letter of 20 March 2003. I advise that the matter has been referred to the Registrar of the National Native Title Tribunal.

Thankyou once again for raising your concerns with the National Native Title Tribunal. If you require any further information, please do not hesitate to call me on (07) 4048 1505 or toll free 1800 640 501.

Yours sincerely

Steven Keating
Case Manager
Tel: (07) 4048 1500
Fax: (07) 4051 3660
Email: stevenk@nntt.gov.au

FOR MORE INFORMATION, PLEASE CONTACT FREECALL 1800 640 501



NATIONAL NATIVE TITLE TRIBUNAL

Cairns Corporate Tower PO Box 9973, CAIRNS QLD 487
Level 14 15 Lake Street Telephone: (07) 4048 1500
CAIRNS QLD 4870 Facsimile: (07) 4051 3660
AUSTRALIA Website: www.nntt.gov.au

25 March 2003

Reference: QC03/1 / QC01/32

Carroll Go-Sam
Spokesperson
Dyirbal Native Title Working Group
P.O. Box 6114
ST LUCIA QLD 4067

COPY

Dear Carroll

Dyirbal and Bar Barrum Native Title Determination application

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Yours sincerely

Steven Keating
Case Manager

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Fax: (07) 4051 3660
Email: stevenk@nntt.gov.au