

Because the sea is common property owned by the state on behalf of the people. But we are actually claiming the seabed is the private property of these people. And all the things in and the right to exclusive control of the waters we are claiming, so that anyone who comes on it has to seek their permission.

**Q:** When does that come up in court?

**Peterson:** It is before the Native Title Tribunal at the moment. That means it is bound to be disputed by the Fishermen's Association, the recreational people, the government probably, so it will probably end up in the federal court.

**Q:** If you can make any sort of rough estimate, of the total coastline of Australia, which of course is an island-continent, what percentage of offshore sea ringing Australia would actually be claimed at this point?

**Peterson:** We're not claiming for the whole of Australia, we're only claiming for one little bit. But in the Northern Territory, Aboriginal people own more than 70% of the shoreline. Right now.

So 70% of the shoreline you can't set foot on, if you are not an Aboriginal person, without permission from Aboriginal people.

**Q:** Do you need a visa?

**Peterson:** You need a permit from the Aboriginal community in the area.

**Q:** So you would be trying to apply for everything off this 70% of the shoreline?

**Peterson:** In the case I am involved in, we are not doing it for the whole 70%. We are just working with one community and the water that is off their bit of the shoreline. But of course it would set a precedent and the other communities would lob in there pretty quickly.

**Q:** This is striking, even from an international standpoint. Is there any precedent for what you are doing, or are you setting a precedent?

**Peterson:** I can't speak authoritatively on that, but honestly I would be very, very surprised if we actually got ownership of the seabed and things. I think the European common law practice will override that.

But I do think, that I would be enormously disappointed and think it most unjust if we didn't end up with a very influential part to play in the administration of coastal waters in the Northern Territory. Obviously meaning, very substantial Aboriginal representation on all the boards which issue licenses and whatever else.

**Q:** It is intriguing. It brings up all sorts of defense questions as well.

**Peterson:** It does.

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## Interview: David Bennett

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# Plenty of jobs for the anthropologists

*Bennett is in the Strategic Policy Unit of the federal Department of Environment, Sports, and Territories (DEST), which handles several agencies in charge of "protected areas" such as the Australian Heritage Commission and the Australian Nature Conservation Agency. He and his superior at DEST, Philip Toyne, are the two key federal bureaucrats involved in trying to establish Australia's first "regional agreement" in the Cape York Peninsula. Bennett moved to his current position from the Aboriginal and Torres Strait Islander Commission. He emigrated to Australia after several years in the U.S. Army.*

**Q:** What is the latest on the regional agreements? Have any been struck, are they on the horizon, or what?

**Bennett:** First of all, under the Native Title Act, Section 21, none have been struck. However, there is a region in the far northern tip of the Cape York Peninsula, which, geographically, because it is isolated—about like having the Everglades designated—the groups up there want to go together, saying, "Look, we have a very strong case for claims. We can do it one claim at a time, or, we will put in, under Section 21, a regional agreement claim. Let's sit down and let's talk about it, and see what we can work out."

Now the whole idea of regional agreements is in part very similar to the Canadian agreements. The idea we have been working on is very close to the Nunavut model in Canada. The closest one is this far northern tip of the Cape, 8,000 square miles of the Cape York Peninsula. Now, there are a couple of other regions considering such things. We have an area called the Kimberleys in Western Australia; they are looking at the possibility of one, because they have an area out there where they think they can make a better deal through claiming all the rights and settling all the issues, including issues of how the area will be governed—self-government per se is not on in this country, but we can have a modified form of it.

The other place that is thinking very strongly about it, is the Torres Strait Islands, because they have won the first and in one way most successful, of the Native Title claims. But now they want to expand it over the sea.

So they are thinking about a regional agreement which would take in the sea, because for the Torres Strait Islanders, it is the sea between, that is more important than the islands,

which sort of mark the parameters.

**Q:** What sort of time period are we looking at for any of these agreements actually being struck?

**Bennett:** Perhaps the most reasonable one, on the far tip of Cape York, I would say another two years, before we have all the people at the table. And then on a guess, because we have never had one of these, but using the Canadian experience, about seven years to completion. That is just a guess.

**Q:** How does it actually work? How has the Canadian experience been transmitted down there? Have you guys been up to Nunavut, have Nunavut people been down there?

**Bennett:** Both. We had a couple of Inuits down here for a regional agreements conference which was held in late July of last year. Ros [Sultan] was one of the major organizers of that conference, and we invited a couple of people over to talk to us about their experiences.

**Q:** Have there been any particular written works you have used?

**Bennett:** One of the things which we have used partially as a guide is the Canadian publication called *Comprehensive Regional Agreements*.

**Q:** You mentioned this Native Title Act. A person mentioned as playing a big role in that was Marcia Langton, who I think is up there in that northern area you mentioned.

**Bennett:** She is the deputy director of the Cape York Land Council, but she is also, I believe, the chairperson of the Australian Institute of Aboriginal and Torres Strait Islander Studies [Iatsis], located here in Canberra.

**Q:** So she played a role in that Native Title Act?

**Bennett:** Yes, to give you the old Mark Twain story here: There was a group called the A Team and there was a group called the B Team. The A Team was made up of the head of the Aboriginal and Torres Strait Islander Commission, Lois O'Donohue; the head of Iatsis, Marcia Langton; the director of the Cape York Land Council, Noel Pearson; the director of the Northern Lands Council, Darryl Pearce; and a fifth member . . . David Ross from the Central Land Council. That was the full runners on the A Team. It was only called the A Team after the B Team was formed. . . .

The story, as it is told around the traps, is that the A Team, the prime minister of Australia, Paul Keating, and several members of his Cabinet went into his Executive Suite in Parliament House and they locked themselves up from Friday evening until Monday morning. The A Team would put forward a proposal to Keating, Keating would listen to it, go over and talk to members of the Cabinet in another room, then he'd walk back and report what the Cabinet said, and it went on like this for something like 48 hours.

There were 13 positions on which the A Team would not pull back, the absolute bottom line, but they had a number of other proposals that they wanted. One of those happened to be the regional agreements. It was suggested by a man named Peter Yu, who is the chairman of the Kimberley Land Council. Yu was familiar with, and, as I remember, had been to Canada, and had seen these sorts of things happen. He was also facing already the idea of trying to strike some sort of deal with a large area which included more than one language group. A language group in the United States would be called a tribe. A tribe doesn't apply here. More than one language group, but everyone had a similar set of goals which could be tied back together, and they could demonstrate a tie to the land.

Now he wanted to try and settle it in the quickest and cheapest way possible. And regional agreements struck him as a good way to do that, so he got that inserted into the bill. Then, when it was picked up and debated in the second reading speeches, which are extremely important here, due to the way we interpret acts, it was made clear that regional agreements were to cover things like keeping it out of either the federal court system or the Native Tribunal System, and simply striking a deal with the relevant state or Commonwealth government officials. Once it was struck, that deal could then be registered as a claim.

**Q:** Are there any leading anthropologists there whose names come to mind?

**Bennett:** Yes, there are some. Anthropologists and Native Title, it is a sunrise industry here, and in fact we may have an anthropologist-led economic recovery down here.

**Q:** There are that many of them?

**Bennett:** They, plus the lawyers. Let me first of all tell you a bit more about the act, so you know how anthropologists fit in.

The act requires that for anyone to make a claim, they must establish two things: 1) They must establish a traditional link to the country they are claiming, and 2) they must show that there has been no act of the British government in the early days, the Commonwealth and state governments, etc., which would extinguish native title.

So if they can show that they have had this continuous traditional connection to a piece of land and no other act has extinguished it, they are in a position to claim it. That is when the anthropologists come in.

Now a lot of this work had already been done, because in 1976 we had passed the Northern Territory Land Act, which started a whole series of land claims already. The anthropologists had been going out staking claims over these areas showing the information.

I am not absolutely sure what has been published by the anthropologists, because a lot of the information is confidential.