



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

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NATIVE TITLE NEWSLETTER

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NATIVE TITLE IN THE NEWS August - September 1998

(Note: Where an item also appears in other newspapers, etc, an asterisk () will be used. People are invited to contact the Native Title Research Unit at AIATSIS if they want the additional references. As usual, NTRU will try to provide people with copies of particular newspaper articles on request.)*

Ad = Advertiser (SA)

Age = The Age

Aus = Australian

CM = Courier Mail (QLD)

CP = Cairns Post

CT = Canberra Times

Fin R = Financial Review

HS = Herald Sun (VIC)

KM = Kalgoorlie Miner

LE = Launceston Examiner

Mer = Hobart Mercury

NTN = Northern Territory News

Rep = The Republican

SC = Sunshine Coast Sunday

SMH = Sydney Morning Herald

Tel M = Telegraph Mirror (NSW)

WA = West Australian

WAus = Weekend Australian

News from the Native Title Research Unit

Australian Anthropological Society Annual Conference

1-3 October 1998, report by Rebecca Hall

As the Native Title Research Unit's anthropologists prepared to attend this years Australian Anthropological Society Annual Conference, an invitation was extended to me, the NTRU's resident archaeologist, to join the fray. I accepted the invitation and began to wade through the mass of concurrent sessions to choose those which I would attend. After much consideration, I attended a mix of 'Fieldwork in the corridors: public policy and the role of contemporary anthropology', 'Anthropology and photography' and 'Issues of contemporary practice in consulting anthropology'.

The issues in contemporary practice sessions centred largely, and not surprisingly, around native title practice. Of particular interest was the panel session, chaired by David Trigger (University of Western Australia), consisting of Julie Finlayson (Centre for Aboriginal Economic Policy

Research), Jeff Stead (Northern Land Council), Athol Chase (Griffith University) and Jeannie Devitt (Cooperative Research Centre for Aboriginal and Tropical Health). The issue of 'who owns what' in relation to material produced under contract was discussed after David Trigger's paper 'Anthropology and consultancy contracts: who owns your brain?'. Also discussed at length were appearances by anthropologists as expert witnesses, and provision of fieldnotes and related material subpoenaed by the court. The complexities and problems of this issue were illustrated by the experiences of Athol Chase and Jeannie Devitt. Concern was raised about the need for professional support, as anthropologists increasingly become involved in giving evidence, and providing field notes in their entirety, to the courts.

In all, the presentations I attended highlighted problems common to many disciplines, and were practical and engaging, making my attendance at the conference a worthwhile experience. (Rebecca Hall)

The *Delgamuukw* Decision: the Case and its Implications for

Native Title in Australia. Workshop - 4 October 1998, report by Rebecca Hall

Native Title Research Unit members were involved in the organisation of a one day workshop to consider and discuss the decision of *Delgamuukw v British Columbia*, with speakers coming from British Columbia to participate.

The workshop was organised primarily by the Australian Anthropological Society with major sponsorship coming from the Aboriginal and Torres Strait Islander Commission. Additional funding and support came from the Centre for Aboriginal Economic Policy Research; the NTRU; Phillips Fox, Cairns; Arnold Bloch Liebler, Melbourne; and the National Native Title Tribunal.

The delegation of speakers from British Columbia consisted of Maas Gaak (Don Ryan) speaker for the Hereditary Chiefs of the Gitxan; Midiigim Gyemk (Neil Sterritt) Gitxan Chief and spokesperson; Stuart Rush QC and Louise Mandell QC lawyers for the plaintiffs.

The workshop was well attended, with many participants coming from interstate. Gatjil Djerrkura, Chairperson ATSIC, delivered the opening address and was followed by the Gitxan and Canadian speakers. Olga Havnen, Graeme Neate, Ranginui Walker and Robert Blowes presented the afternoon sessions.

Participants found the presentations both stimulating and inspiring. Papers from the workshop will be published by the NTRU. (Rebecca Hall)

Workshop on the New Registration Provisions of the *Native Title Act 1993*.

17-18 September 1998, report by Kado Muir.

The amendments to the *Native Title Act 1993 (NTA)* came into effect on 30 September 1998. The *NTA* now requires all current and future native title applications to pass the registration provisions in ss.190B and 190C before accessing any Right to Negotiate or to be consulted on dealings in the land that is subject to native title determination applications. Section 190B deals with the merits of applications while s.190C deals with procedural and other matters.

One of the significant implications of these sections is the anticipated need for the expert advice of anthropologists to assist Native Title Representative Bodies (NTRBs) to deal with compiling the documentation to pass the test. Within the next 12-18 months, the majority of the 700 claims currently lodged with the National Native Title Tribunal (NNTT) will be subject to the test. The

Native Title Research Unit at AIATSIS, the Australian Anthropological Society and the Native Title and Land Rights Branch at ATSIC, convened a workshop for Native Title Representative Body staff and senior consulting anthropologists in Canberra on 17-18 September 1998.

The objectives of the workshop were:

- to inform anthropologists of the new regimes and potential administrative processes of the NNTT under the requirements of the registration test;
- to explore practical research approaches for handling the new registration provisions; and
- to establish workable and consistent strategies for management of complex anthropological issues and potentially, to feed these into the NNTT administrative processes.

The topics discussed at the workshop reflected the criteria for establishing the merits of applications under s.190B. These criteria include:

- Identification of the area subject to native title.
The information and map required to accompany the application must show, with reasonable certainty, the particular area over which the native title rights and interests are claimed.
- Identification of native title group.
The persons in the native title claim group are named in the application or are described sufficiently clearly so that it can be ascertained whether any particular person is in the group.
- Identification of claimed native title.
The description of the native title rights and interests is sufficient to allow for all the rights and interests to be readily identified.
- Factual basis for claimed native title.

The description of the factual basis of the claim must be enough to support the assertion that those native title rights and interests exist. This will include:

- the association of the native title claim group and its ancestors with the claim area; and
 - the existence of traditional laws or customs observed by the claim group from which native title derives; and
 - the continued holding of native title in accordance with those laws and customs.
- Prima facie test.
At least some of the native title rights and interests that are claimed can, on the face of it, be made out. Only details of those rights and interests that have satisfied the 'prima facie' test can be entered on the Register of Native Title Claims. The requirement to negotiate in good faith in the right to negotiate process only applies to these registered rights and any determination by the arbitral body should only address these registered rights.
 - Physical Connection.
At least one member of the claim group has or had a traditional physical connection with any part of the claim area. A second way is that at least one member of the claim group used to have a traditional physical connection with any part of the claim area, and ordinarily would continue to have such connection were it not for some action by the lessee or the lessee's agent.

The workshop was well attended and required two full days of undivided attention to consider each of the criteria. Brief discussion papers on each of the criteria were presented, followed by an open discussion with questions and workshops. Lisa Wright of the National Native Title Tribunal made a valuable contribution and was able to provide some insight into the NNTT's perspectives on the provisions. The workshop confirmed that the registration provisions are not a simple process and will require a lot of hard work by NTRBs and assisting experts. The NTRU will publish the proceedings of the workshop. (*Kado Muir*)

CLAIMS

New South Wales

Nucoorilma People

The Nucoorilma people have formally proceeded with a native title application lodged last month. The application covers native title on unallocated Crown Land in an area ranging from the Macintyre and Mole rivers in the north, the Great Dividing Range in the east and south to the Moonbi Ranges. From there, the application extends north-west to Barraba and back northward to the Macintyre River. The application is centred on Mt Bullwangen near Tingha. (*Glen Innes Examiner, 13 Aug, p1*)

Elouera People [NNTT Ref#NC95/9]

The National Native Title Tribunal has referred the Elouera People's native title application in the Illawarra region to the Federal Court for resolution. The application covered specific parcels of crown land and coastal waters between Shellharbour and Kiama on the NSW South Coast and was lodged on 6 September 1995.

NSW Regional Coordinator Mr Andrew Solomon said the Tribunal referred the matter because efforts to mediate between the applicants and other parties were unsuccessful. The Tribunal consulted all parties to the mediation, including the State, local government, and the NSW Aboriginal Land Council. There was general support for referral of the application to Court. (*NNTT Media Release, 4 Sept, p1*)

Capertee [NNTT Ref#NN98/2]

A Non-Claimant Native Title Determination Application has been lodged with the National Native Title Tribunal over a residential lot in Capertee (45km north of Lithgow). The Tribunal has given notice that anyone who wishes to register an application over the area, or anyone who wishes to become a party to the application, needs to notify the Tribunal (following correct procedure) by 16 November 1998. (*Aus, 16 Sept, p33*)

Wiradjuri Wellington [NNTT Ref#NC94/1]

With the Wiradjuri Wellington claim due back in the Federal Court in November, claimants and the Government are working towards an agreement. An agreement has so far evaded parties to the claim, but with the deadline approaching, a new solution is being canvassed in which the land would be transferred as freehold. The land under question is the 253-hectare Wellington Common on the banks of the Macquarie River in the State's central west. If this agreement comes about, it will be the first land under native title to be handed back to Aboriginal people. (*SMH, 19 Sept, p5*)

Wagga Wagga [NNTT Ref#NN98/10]

The National Native Title Tribunal has issued a notice of non-claimant native title determination application, asking those who might wish to claim native title over any part of the area subject to the application to lodge their claim with the Native Title Registrar by 23 November 1998. The application covers Cabarita Park, Wagga Wagga. (*Aus, 23 Sept, p17*)

Cobar [NNTT Ref#NN98/8]

The National Native Title Tribunal has issued a notice of non-claimant native title determination application, asking those who might wish to claim native title over any part of the area subject to the application to lodge their claim with the Native Title Registrar by 23 November 1998. The area covered by the application comprises land situated near Cobar. (*Aus, 23 Sept, p17*)

Queensland

Wulgurukaba People No.1 and No.2 [NNTT Ref#QC98/30, QC98/31]

The National Native Title Tribunal has issued a notice of claimant native title determination applications, asking those who might wish to become a party in relation to the applications to contact the Tribunal by 23 November 1998. The applications cover areas of national park and unallocated state land on Magnetic Island. (*Aus, 23 Sept, p17*)

Yalanji People [NNTT Ref#QC95/10]

The National Native Title Tribunal today welcomed the nation's third agreement to formally recognise native title - and the first over a pastoral property. Tribunal President, Justice Robert French, said the coexistence agreement, struck by pastoralists and local traditional owners in north Queensland, was an historic step forward in the development of native title in Australia. The agreement is between Mr & Mrs Pedersen of Karma Waters Station and the Western (Sunset) Yalanji people. It includes a legally binding land use and access agreement which can serve as a model for other pastoralists around Australia wanting to negotiate the resolution of native title applications.

The Western (Sunset) Yalanji native title application, covering 25,000 hectares near Mount Carbine, north west of Cairns, was lodged on 19 May 1995. The application covered Karma Waters Station, which was held by the Pedersens under an occupation licence that they sought to upgrade to a more secure form of tenure.

Justice French said the Queensland Government's support for terms of the agreement was a critical ingredient in achieving a consent determination of native title, which was ratified by the Federal Court in Cairns today. Justice French said while there were more than 1,200 documented agreements since the introduction of native title laws in Australia, few involved the pastoral industry. (*NNTT Media Release, 28 Sept, p1*)*

Western Australia

Kalaako [NNTT Ref#WC97/25]

The National Native Title Tribunal has referred a 25,000 square kilometre central Goldfields native title application to the Federal Court for resolution. The application, by Rollick Dimer and Edna Reid on behalf of the Kalaako people, was lodged on 26 March 1997.

Tribunal Registrar Chris Doepel today said the application was overlapped by 26 other native title applications. Intensive efforts to mediate between the Indigenous applicants about the overlap had been unsuccessful, leaving the Tribunal with no option but to refer the matter to the Federal Court. Mr Doepel said the Tribunal took every reasonable step in the mediation process to assist the parties reach to resolve differences and reach an agreement. (*NNTT Media Release, 3 Sept, p1*)

Maduwongga People

The National Native Title Tribunal has rejected a submission by lawyers for Goldfields native title applicants that the Western Australian Government did not act in good faith in negotiations over the grant of a mining lease 40 kilometres north of Kalgoorlie to two small scale miners. Tribunal Registrar, Mr Chris Doepel, said the submission was made by lawyers representing the Maduwongga people following the breakdown of negotiations and an application by the State Government for the Tribunal to arbitrate the matter. Mr Doepel said Tribunal Member Mr Kim Wilson had ruled that the State Government had done everything possible to progress the negotiations, rejecting the submission by the Maduwongga people.

Following the decision on the "good faith" submission, the Tribunal will now move to determine the substantive question of whether the grant of the mining lease should go ahead, and if so, under what conditions. (*NNTT Media Release, 13 Aug, p1*)

Balanggarra People

The State Government has signed a framework agreement that recognises the Balanggarra people as traditional owners of about 26,000 sq km of land in the north-west Kimberley. The agreement, negotiated outside the *Native Title Act*, was signed last month. Negotiations are now proceeding over the details of the agreement, which should include recognition of native title rights and interests and issues of land management. (*Sunday Times, 6 Sept, p4*)

Northern Territory

Larrakia – East Arm (water) [NNTT Ref#DC94/4], and

Larrakia – East Arm (land) [NNTT Ref#DC94/5]

The National Native Title Tribunal has referred two Darwin native title applications to the Federal Court for resolution. Tribunal Registrar, Chris Doepel, said the two applications total 18 sq km of land and sea on the site of the East Arm Port being built in Darwin Harbour. The larger of the two applications - nearly 15 sq km - covers waters in East Arm as well as Catalina, North Shell and South Shell islands which the Northern Territory Government compulsorily acquired under the Lands Acquisition Act for the project. The smaller three sq km application covers the mainland Port area and was also subject to a compulsory acquisition.

The Northern Land Council on behalf of the Larrakia people lodged the applications on 18 November 1994. A number of meetings about these and other Darwin applications were held. Mr Doepel said as with all native title applications, the Tribunal sought to mediate a settlement between the parties. In this case the parties were the Northern Territory and Commonwealth Governments, the Larrakia people, and the Dangkalaba clan of the Larrakia people. He said referral of native title applications to the Federal Court only occurs when a resolution or settlement could not be achieved through the mediation process, and sometimes where important legal issues were involved. In this case, there was no prospect of a negotiated settlement between the NT Government and the native title parties. The Government also wants clarification of several key legal questions about the impact on native title of the compulsory acquisition of land and waters, and the subsequent development activities. (*NNTT Media Release, 4 Sept, p1*)

Fejo v Northern Territory [1998]

The High Court has handed down a judgement involving native title and freehold title. The Larrakia people had applied for their native title rights to be recognised over a large area of Crown land outside Darwin. The court found that the grant of land in fee simple (in 1882), which has since been resumed by the Crown (in 1927), had extinguished rather than suspended native title. The judges all agreed that a freehold grant did not leave any room for native title to co-exist. Native title could not be revived once a freehold grant ended and the land again became vacant Crown land. (*DT, 11 Sept p28*)(*WA, 11 Sept, p7*)(*Aus, 11 Sept, p2*)*

MINING AND NATURAL RESOURCES

New South Wales

Timbarra Gold Project – Ross Mining

An agreement between mining company Adelong Consolidated Gold Mines NL, the Wiradjuri and Walgalu people and the Tumut/Brungle Aboriginal Council, will be signed today. The parties agreed that the local Aboriginal community would have equity in a gold mine proposed for Adelong, and rights to job, education and training opportunities. Aboriginal people will also

have the right to enforce environmental standards and will be involved in monitoring and site clearance. The agreement will secure Aboriginal rights to protect significant areas. (*SMH*, 2 Sept, p6)* The Walgalu have agreed that they will consent to certain future acts, including the grant of mining tenements. (*Tumut and Adelong Times*, 4 Sept, p1)*

Queensland

Chevron Gas Pipeline

A memorandum of understanding between the Queensland and Papua New Guinea governments was signed yesterday over the building of Chevron's 2,600 km gas pipeline. The Queensland Parliament heard that a Labor Party Senate amendment to the *Native Title Act* excluded the pipeline project from the right to negotiate process, adding certainty to the project. (*Aus*, 6 Aug, p28)

Pasminco Century Project

NORQEB has issued a notice of intention as the first step toward acquiring native title rights for a power line on the Gunpowder to Pasminco Century Project. NORQEB is involved in negotiations with Aboriginal groups about having cultural heritage surveys done along the route. (*North West Star*, 10 Sept, p3)

Negotiations over getting power lines through to the Century Zinc mine have broken down. The talks, between Waanyi, Kalkadoon and Injilira people and the North Queensland Electricity Commission, have stalled over requests by Indigenous groups for their representatives to be paid negotiation fees. Indigenous representatives have also experienced opposition to their wish that the electricity generator supplies power to local communities. (*Aus*, 23 Sept, p2)*

Energy Equity

Energy Equity and the Kullilli people are involved in negotiations over compensation for the establishment of gas production facilities on mining lease land west of Eromanga in Queensland's far south-west. The negotiations have been held over a six month period and include the State Government and other interested parties. Under the proposed agreement, compensation moneys will be used to set up a lease for the Kullilli people, with an office and historical museum, and to purchase a cattle property. (*CM*, 19 Sept, p12)

South Australia

Heathgate Resources – Beverley Project

Uranium miner Heathgate Resources has struck an agreement with four Indigenous groups in the area of their Beverley project. The four groups are all native title applicants with interest in the country, which is between the Flinders Rangers and Lake Frome in South Australia's north. The applicants, representing the Kuyani and Andjmathanha peoples, will each receive a share of the agreed upon royalty. The applicants who finally establish title to the area, through processes of the *Native Title Act*, will then receive the entire royalty. Until then, Heathgate has agreed to cover legal, administrative and travel costs for all applicants. The agreement recognises traditional ownership of country. (*Aus*, 18 Sept, p26)*

Heathgate Resources have agreed to:

- provide employment for Aboriginal people of at least 20 per cent;
- provide training to employees about Aboriginal cultures; and
- build a 5 per cent advantage for Indigenous businesses into quotations for supply of goods and services. (*Ad*, 18 Sept, p21)

Western Australia

Hutt Lagoon, near Geraldton

The Nanda and Naaguja people have negotiated a native title agreement with biotechnology company, Betatene Pty Ltd. The agreement covers the use of Hutt Lagoon for an aquaculture project, which will expand the company's algae farm from 250ha to 500ha. The company has agreed to recognise Nanda and Naaguja people as the traditional owners and will also pay compensation. All parties are pleased with the agreement, which is backed by the Yamatji Land and Sea Council. (*WA, 29 Aug, p52*)

AGREEMENTS

New South Wales

Newtons Beach, Wonboyn

Local Aboriginal people have negotiated access to Newtons beach, which is located within a 19,000 ha wilderness area near Wonboyn. Access to the beach was blocked in July 1997, in order to protect the wilderness area. Eden Local Land Council chairperson, Ben Cruse, says his people will access the beach for cultural purposes including ceremonies and educational camps. (*Time, 31 Aug, p74*)

An agreement over the use and management of 10 hectares of land in Beacon Hill was signed yesterday. The agreement was between the Metropolitan Local Aboriginal Land Council, the Warringah Shire Council and the Brookvale Valley Community Group. (*SMH, 11 Sept, p2*)

Queensland

Charters Towers District

Negotiations between RGC Thalanga Highway-Reward mining personnel and the Kudjala people has resulted in agreement for Aboriginal artifacts found on the site to be professionally removed. (*Northern Miner, 11 Sept, p1*)

Western Australia

Regional Forest Agreement

The Western Australian and Federal Governments have been asked to widen their consultation process and speak to more Aboriginal people before they come to a decision regarding future logging in the South-West forests. Prominent Aboriginal people have called for the Regional Forest Agreement process to be stalled until important members of their community are consulted. (*WA, 29 Aug, p45*)

Northern Territory

Traditional owners have agreed to hand over areas of land that are needed to build the Alice Springs to Darwin railway. Under the agreement, the owners will be compensated through a package that includes remuneration and compensation for sacred sites as well as community development. It is estimated that the railway will cost \$1 billion. (*Ad, 14 Sept, p7*) (*NT, 15 Sept, p6*)*

AMENDMENTS

National

Special Minister of State Senator Nick Minchin announced that the new *Native Title Act* will come into effect on 30 September 1998. The changes will include:

- New procedures for processing of native title claims through the NNTT and the Federal Court.
- A new registration test.
- Complementary State legislation being enabled to take effect.
- Amendments relating to agreements.

The amendments relating to Native Title Representative Bodies (NTRBs) will not come into effect until 30 October 1998. This is to allow an extra month for consultation with the NTRBs on the implementation of the new procedures. (*Special Minister of State, Media Release, 11 Aug, p1*)*

National Native Title Tribunal President, Justice Robert French, today confirmed that the Federal Tribunal would begin applying the new, stringent registration test to existing and fresh native title applications from 30 September, the proclamation date of the amended Federal *Native Title Act*. He said the new test, which the Tribunal had been preparing to implement for several months pending the passage of the *Native Title Amendment Bill*, could result in a significant number of existing applicants losing their right to negotiate over developments on land where native title may exist.

Fresh applications lodged after 30 September would have the registration test automatically applied within four months, or as soon as possible, after the date of lodgment. This meant new native title applications would not attract the right to negotiate over mining or exploration leases until satisfying the stringent criteria. Justice French said there were a number of conditions which had to be satisfied to achieve registration, including that:

- at least one member of the applicant group has or had a traditional physical connection with the area;
- no member of the native title claim group was a member of a native title claim group for a previous application; and
- the applicant was a member of the claim group and authorised to make the application on behalf of everyone else in the claim group.

He said it was a misconception that applications that failed the registration test would be defunct, as the registration test is primarily a gateway to the right to negotiate. Native title applications that do not satisfy the registration test criteria will lose the right to negotiate and other procedural rights, but could remain as an application to determine native title rights and interests. Justice French said the Tribunal would implement the provisions of the new Federal Act until such time as each State assumed full responsibility for the registration and mediation of native title applications. (*NNTT Media Release, 19 Aug, p1*)*

National Native Title Tribunal President, Justice Robert French, said in the 59 working days since the passage of the *Native Title Amendment Bill*, the Tribunal had prepared more than 700 case files for transfer to the Federal Court, as under the new laws all existing claims would be treated as proceedings in the Court.

The Tribunal has also developed detailed procedures to underpin key elements of the 421 page amended *Act* and sent education and training material to thousands of stakeholders Australia wide. (*NNTT Media Release, 29 Sept, p1*)

New South Wales

The NSW State Government has introduced legislation in response to the Federal *Native Title Amendment Act (1998)*. The *Native Title (NSW) Act* extinguishes native title on all freehold, residential leases, commercial leases and leases for community purposes. The Government will leave the question of whether native title can co-exist on pastoral leases in the State's west, up to the court to decide. The legislation will also secure small-scale mining operations at Lightning Ridge and White Cliffs, and allow approval for further exploration after consultation with Indigenous representatives. (*DT, 16 Sept, p26*)*

The NSW Aboriginal Land Council says that around 80 of the 115 applications before the National Native Title Tribunal will be tossed out after the stricter registration test under new legislation is applied. (*SMH, 30 Sept, p6*)

Queensland

In response to the introduction of a Bill to extinguish native title on many leases and permits by the Queensland Government, the Queensland Indigenous Working Group will be asking the Federal Labor Party to oppose the endorsement of the State's native title legislation in the Senate. The Working Group's chairperson, Terry O'Shane, said Indigenous groups would consider a legal challenge to the legislation. (*Aus, 13 Aug, p6*)* The challenge would centre on the question of whether Grazing Homestead Perpetual Leases extinguish native title. (*CM, 19 Aug, p4*)*

Queensland Premier, Peter Beattie, has consulted the Crown Solicitor in regard to possible challenges to his native title legislation. The Crown Solicitor said that there were no guarantees that the High Court would accept the legislation. Mr Beattie has acknowledged that the legislation would cause considerable grief to Aboriginal people, and could deprive them of legitimate rights to land. (*CM, 27 Aug, p3*)*

The Queensland State Government is reported to be considering the implementation of a process that will cover negotiations between mining and Indigenous stakeholders over different types of land tenures, merging Federal Government standards for right to negotiate procedures on vacant crown land with procedures proposed for mining on pastoral leases. (*FinR, 15 Sept, p3*)* Queensland Premier, Mr Peter Beattie, said an options paper had been put forward for discussion by all parties, and no decision had been made on right to negotiate procedures. (*CM, 16 Sept, p2*)

Queensland Government sources have indicated that discussions with interested parties over the right to negotiate procedures are continuing, with the hope of a legislative outcome in October. The Government is reported to be favoring retaining negotiating rights on pastoral leases. (*SMH, 30 Sept, p6*)

Western Australia

The Western Australian Government is expected to introduce two Bills into Parliament next month. Until then, the Bills, which amend the 1995 *Titles Validation Act* and establish a State tribunal, are expected to be available for public comment. (*WA, 7 Aug, p24*)*

Western Australia is the first State or Territory to announce legislation that is designed to take over the National Native Title Tribunal's entire function. (WA, 22 Aug, 51)

As a response to the proposed WA legislation, the Aboriginal Legal Service has warned that extinguishment of native title would result in many claims for compensation and a considerable compensation bill. (WA, 24 Aug, p26)

Tasmania

The Tasmanian Aboriginal Centre is holding negotiations with Aboriginal people over pursuing a native title application, which the Centre hopes to lodge in the near future. The application will cover Crown land from Freycinet Peninsula to Ben Lomond and across to the Tamar Valley. The Centre's legal manager, Michael Mansell, has indicated that this will be a test case for Australia as the case will be testing the legal argument that the Aboriginal community still had a legal right to the land it once occupied. This argument relies on gaining recognition that north-east Aboriginal groups had freehold title to large areas of the east coast 200 years ago. (Mer, 26 Aug, p5)*

Northern Territory

The Northern Territory has become the first state or territory to pass native title legislation following the Federal Government's *Native Title Amendment Act*. The legislation removes the right to negotiate provisions and establishes a Territory native title tribunal. The Northern Territory Government hopes to establish their tribunal, to be called the Lands and Mining Tribunal, by 30 September. (HS, 21 Aug, p16)* The Tribunal will only take over the National Native Title Tribunal's function in the area of future acts. Aboriginal representatives condemned the legislative package as being the closest thing to extinguishment that the Federal legislation would allow. (WA, 22 Aug, 51)*

GENERAL NATIVE TITLE ISSUES

International

The head of the Unrepresented Nations and Peoples Organisation (UNPO), Ms Helen Corbett, will address members of the United States Congress on issues including that of how the US can assist Aboriginal people in the furtherance of their rights. Ms Corbett, who is the first Aboriginal person to be invited to address Congress members, is expected to tell the members that the Federal Government is breaching fundamental Indigenous rights. Ms Corbett has warned of the likelihood of a renewed call for a 2000 Olympic boycott, following the passage of the *Native Title Amendment Act* and the rise of One Nation. The UNPO is based in the Hague and is an advocate for about 100 million people from around 50 minorities and small nations around the world. (SMH, 17 Aug, p5)

A delegation of experts involved in the *Delgamuukw case* in Canada yesterday spoke to native title lawyers in Sydney. Delegation members included Maas Gaak (Don Ryan) speaker for the Hereditary Chiefs of the Gitxan; Midiigim Gyemk (Neil Sterritt) Gitxan Chief and spokesperson; Stuart Rush QC and Louise Mandell QC lawyers for the plaintiffs. The Gitxan people have recently demanded half of the profits from wood cutting and mining operations on their territory from the provincial Government. They are yet to hear a response from the Government. The delegation said the *Delgamuukw case* has implications for Australia. Law professor, Richard Bartlett agrees, saying that Aboriginal oral history was given great weight by the Canadian Supreme Court, a fact likely to have considerable significance here. The Canadian Supreme Court also considered the question of Indigenous self-government as important. Mr Stuart Rush,

QC, said that the Canadian Supreme Court and the Australian High Court influence each other's legal thinking. (*SMH, 30 Sept, p6*)

National

A conference focusing on legal issues of native title following the passing of the *Native Title Amendment Act*, will be held in Sydney on 19 – 20 October. The conference is called 'Living With Wik: the new native title agenda'. (*Calcutt Watson and Associates Media Release, 7 Aug, p1*)

The President of the National Native Title Tribunal, Justice Robert French, today expressed appreciation for the service rendered by outgoing Tribunal Member Rick Farley who has resigned to contest an Australian Capital Territory Senate seat in the forthcoming Federal election. Mr Farley, who was appointed as a part time Member on 12 December 1995 for a three year term, tendered his resignation to the Governor General. (*NNTT Media Release, 8 Sept, p1*)

The first national audit of native title agreements since the introduction of native title laws nearly five years ago revealed more than 1,200 agreements had been struck between miners, pastoralists, different Indigenous groups, industry bodies and governments - despite the controversy over the legislation. National Native Title Tribunal President, Justice Robert French, who will detail the findings at the Western Australian Pastoralists and Graziers Association Annual Conference in Karratha today, said some of the agreements were small in scale and many related to the grant of mining leases, but all were building blocks toward a better relationship between Indigenous and non-Indigenous Australians.

"For its part, the National Native Title Tribunal has designed template agreements for use anywhere in Australia, devoted attention to understanding the problems faced by pastoralists through workshops and seminars, and designed its mediation practice to suit the needs of the parties. There is no need for a battery of lawyers or city meetings -- the Tribunal will go anywhere, anytime and offer whatever practical assistance is necessary to draw up localised native title agreements because that is a more inexpensive and less adversarial course of action than to settle native title applications by fighting them in the Federal Court."

Justice French said the NNTT's audit of agreements showed:

There were a total of 1,244 agreements throughout Australia with 91% of all agreements in Western Australia. Of the total number of agreements:

- 246 or 20 % were native title determination application related agreements (including non-native title outcomes); and
- 998 or 80 % were future act related agreements (i.e. related to the grant of mining leases and fast tracked exploration leases, and mainly in Western Australia);

Of the 246 native title determination application related agreements:

- 70 % were in Western Australia;
- 84 % involved the National Native Title Tribunal in mediation;
- 60 % of the agreements were confidential; and
- 50 % were agreements to amend native title applications to remove particular tenure types, or reduce parties or the number of claimants.

Of the 998 future act related agreements most were confidential s.34 agreements (usually related to the granting of mining leases) or agreements associated with fast tracking procedures for

exploration licences which were struck between miners and Indigenous people in Western Australia, usually without direct Tribunal assistance.

For the purposes of the audit, agreements were defined as an outcome reached with the active participation of two or more parties, with or without the Tribunal as mediator. Agreements could include reconciliation agreements, memoranda of understanding, process agreements or statutory title agreements. (*NNTT Media Release, 11 Sept, p1*)*

The Coalition Government argues that it has solved issues around native title and *Wik*. The Labor Opposition says they will not repeal the *Native Title Amendment Act* if they win Government, but will revisit the legislation with a process to fully involve Indigenous stakeholders. (*Aus, 17 Sept, p6*)*

The Australian Greens have called for the *Native Title Amendment Act* to be repealed, as it winds back rights recognised by the High Court. (*Age, 21 Sept, pA6*)*

The United Nations Committee on the Elimination of Racial Discrimination has asked the Federal Government to explain how amendments to the *Native Title Act 1993* fit in with the international treaties it has signed. In particular, the committee wishes to consider the compatibility of the amended *Act* with Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. Australia is the first western country to be asked to explain its policies on race to the Committee. (*SMH, 23 Sept, p7*)*

New South Wales

The Eastern Suburbs Organisation for Reconciling Australia will hold the first large public forum since the Senate passage of the *Native Title Act* amendments. The forum will assess in detail the consequences of the amended legislation. (*Media Release, 3 Aug, p1*)

A new high school syllabus for Year 7 – 10 students in NSW, will cover issues including Aboriginal reconciliation, land rights and native title. (*DT, 5 Sept, p3*)

Queensland

A steering committee for the Greater Mount Isa Regional Aboriginal Corporation has been working on a submission for a Mount Isa region Native Title Representative Body, which would cover an area spanning from Mount Isa to Camooweal, to Cloncurry, Julia Creek and then to Boulia and Birdsville. Steering committee member, Sunny Ah Sam, said the committee had consulted widely with the community. He said that incorporated status has already been achieved, subject to approval by the Aboriginal Affairs Minister. (*North West Star, 1 Sept, p5*)

Northern Territory

Land councils in the Northern Territory are seeking financial compensation over land to be used for the Alice Springs to Darwin railway. They have also asked for equity in the railway, after the conclusion of the operator's concession. The Federal government are looking to introduce special legislation, at the Northern Territory Government's request, to acquire land along the rail corridor. (*FinR, 7 Aug, p15*)* Spokesperson for the ALP, Mr Daryl Melham, said the party would not support such legislation in the senate as they had legal advice rejecting the need for special legislation. (*NT, 1 Aug, p6*)

The Federal Government will be ready to introduce legislation to allow the Northern Territory Government to acquire land in September. Federal Transport Minister Mark Vaile, announced the legislation, saying he is confident that it would be passed in September or October. The Northern Territory Government have given the land councils until August 27 to agree to their compensation package. These talks are continuing. (NT, 8 Aug, p 6)*

RECENT PUBLICATIONS (Not AIATSIS Publications)

Brennan, F. 1998 *The Wik Debate*

Father Frank Brennan's book, *The Wik Debate*, was launched Monday 14 September by ATSIC Chairperson, Gatjil Djerrkurra. (Aus, 14 Sept, p11)

CDRom:

ATSIROM: Aboriginal and Torres Strait Islander CD-ROM. RMIT Publishing, Melbourne.

Summary:

ATSIROM brings together, for the first time, an extensive collection of significant Australian databases containing selected bibliographic records from the country's leading sources relating to Aboriginal and Torres Strait Islander peoples.

The CD-ROM contains references to published and unpublished material including journal articles, newspaper and newsletter articles, pamphlets, ephemera, media/press releases, books and book chapters, manuscripts, rare works, speeches, conference proceedings, theses, research reports, parliamentary information on key issues, cases and judgments, Internet sources, royal commissions and government department reports, videos, tapes, posters, and much more.

A broad range of subjects are covered across twelve different databases, including land rights and native title, the Stolen Generation, deaths in custody, arts, music, environmental issues, literature, Indigenous languages, law education, heritage, health, history and culture, human rights, social and economic issues, racism and discrimination, tourism, sport and recreation, and exhaustive coverage of the Torres Strait and Far North Queensland.

For further information contact: Subscriptions Department, RMIT Publishing, PO Box 12477, Melbourne, VIC, 8006. Ph: 03 – 9349 4994. (*ATSIC, RMIT Publishing, Joint Media Release, 13 Aug, p2*)

Langton, M. 1998 *Burning Questions: emerging environmental issues for Indigenous peoples in northern Australia*. Centre for Indigenous Natural and Cultural Resource Management, Northern Territory University, Darwin, Australia.

Native Title Research Unit Publications

The following NTRU publications are available from Aboriginal Studies Press, ph.: (02) 6246 1191.

Working with the Native Title Act: alternatives to the adversarial method. Edited by Lisa Strelein, 1998. (Proceedings from a native title legal practitioners' workshop held 4-5 June 1997, Native Title Research Unit, AIATSIS – cost \$9.95 including postage)

Regional Agreements: Key issues in Australia, volume 1. Edited by Mary Edmunds, 1998. (\$16.95 including postage)

A Sea Change in Land Rights Law: The Extension of Native Title to Australia's Offshore Areas by Gary D. Meyers, Malcolm O'Dell, Guy Wright and Simone C. Muller, 1996. (\$12.95 including postage)

Heritage and Native Title: Anthropological and Legal Perspectives

(Proceedings of a workshop conducted by The Australian Anthropological Society and AIATSIS at the ANU, Canberra, 14-15 February 1996 ~ cost \$20 including postage)

The Skills of Native Title Practice

(Proceedings of a workshop conducted by the NTRU, the Native Title Section of ATSIC and the Representative Bodies, 13-15 September 1995 - cost \$15 including postage)

Anthropology in the Native Title Era

(Proceedings of a workshop conducted by the Australian Anthropological Society and the Native Title Research Unit, AIATSIS, 14-15 February 1995 - cost \$11.95 including postage)

Claims to Knowledge, Claims to Country: Native Title, native title claims and the role of the anthropologist

(Summary of proceedings of a conference session on native title at the annual conference of the Australian Anthropological Society, 28-30 September 1994 - out of print)

Proof and Management of Native Title

(Summary of proceedings of a workshop conducted by the Native Title Research Unit, AIATSIS, on 31 January-1 February 1994 - cost \$9.95 including postage).

The following publications are available from the Native Title Research Unit, AIATSIS, Tel (02) 6246 1161, Fax (02) 6249 1046 (issued free of charge):

Issues Papers published in 1996, 1997 and 1998:

No 9: *The requirements to be met by claimants in applications for a determination of native title*, by George Irving

No 10: *Native Title and Intellectual Property*, by David H Bennett

No. 11: *Raising Finance on Native Title and other Aboriginal Land*, by Joe Nagy

No. 12: *Co-existence of interests in land: a dominant feature of the common law*, by Maureen Tehan

No. 13: *Wik- the way forward*, by Rick Farley

No. 14: *Lighting the Wik of change*, by Mark Love.

No. 15: *Neither Rights nor Workability: The Proposed Amendments of the Right to Negotiate*, by Liz Keith.

No. 16: *Racial Non-Discrimination standards and proposed amendments to the Native Title Act*, by Jennifer Clarke.

No. 17: *Regional agreements in Australia: an overview paper* by Patrick Sullivan.

No. 18: *The proof of continuity of native title* by Julie Finlayson and Ann Curthoys.

No. 19: *Implications of the Proposed Amendments to the Native Title Act* by Tamara Kamien

No. 20: *Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime* by J.C. Altman

No. 21: *A New Way of Compensating: Maintenance of Culture through Agreement* by Michael Levarch and Allison Riding

No. 22: *'Beliefs, Feelings and Justice' Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples' Rights in Canada* by Lisa Strelein

No. 23: *'This Earth has an Aboriginal Culture Inside' Recognising the Cultural Value of Country* by Kado Muir

No. 24 *The Origin of the Protection of Aboriginal Rights in South Australian Pastoral Leases* by Robert Foster

No. 25 *Compulsory Acquisition and the Right to Negotiate* by Neil Löfgren

Regional Agreements Papers: Land, Rights, Laws: Issues of Native Title

No. 2: *Local and Regional Agreements* by Justice Robert French

No. 3: *The Other Side of the Table: corporate culture and negotiating with resource companies* by Richie Howitt

- No. 4: *The Emperor Has No Clothes: Canadian Comprehensive Claims and their relevance to Australia*
by Michele Ivanitz
- No. 5: *Process, Politics and Regional Agreements* by Ciaran O’Faircheallaigh
- No. 6: *The Yandicoogina Process: a model for negotiating land use agreements* by Clive Senior

Other Publications include:

A Practical Guide to Choosing Consultants for Native Title Claims, by Paul Burke
Native Title Newsletter (published bi-monthly)

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