



# AIATSIS

Australian Institute of Aboriginal and Torres Strait Islander Studies

## Native Title Research Unit

GPO Box 553  
Canberra ACT 2601  
Tel 06 246 1153  
Fax 06 249 1046  
Email [ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au)

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## NATIVE TITLE NEWSLETTER

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No. 1/97

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## NATIVE TITLE NEWS OF DECEMBER 96 - JANUARY 97

### 1. Wik decision

See also the [full article on Wik](#) further below

December 1996 and January 1997 has been dominated by issues arising from the High Court's judgment on the Wik case. A national summit bringing together Native Title Representative Bodies, Pastoral and Mining Industry Organisations and Community leaders was held in Cairns 21-25 January 1996. The summit, hosted by the Cape York Land Council and ATSIC, discussed the implications of the Wik decision and briefed political leaders and the media. A set of five principles were released at the summit:

- No extinguishing native title.
- No amendment of the Racial Discrimination Act.
- Respect for the High Court's native title decisions.
- Resolution through negotiation and agreements.
- Further negotiations over the Native Title Act amendments.

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### 2. Plain English guide to the Wik case

The Native Title and Land Rights Branch of ATSIC has released a plain English guide to the Wik case. Copies can be obtained by phoning Di Dyer of the Native Title and Land Rights Branch on (06) 289 3348 or faxing (06) 285 2064. It is also available on the ATSIC web site at <http://www.atsic.gov.au/native/wik.htm>.

### 3. Regional Agreements

Indigenous Australia is increasingly looking to Regional Agreements, either under Section 21 (4) of the Native Title Act or outside the Native Title Act, as one means of realising their rights in land. Other interest groups including government bodies and industry groups are also showing growing awareness of the benefits of negotiated agreements. This interest has been heightened through the native title discussions convened by the Council for Aboriginal Reconciliation in 1996 and the High Court Wik judgment.

Several agreements have been made between various groups, including native title claimants, native title representative bodies, and industry groups - the Mt Todd Agreement in the NT, various agreements between the Rubibi Working Group and government bodies in the Broome region, and the Cape York Heads of Agreement in Queensland (CYHA). Of these, the CYHA has probably involved the most thorough processes of gathering information on the environmental resources, projected viability of local industries of the area, and negotiation between local interest groups to develop a framework for managing the future development of the area.

These and other possible models and directions were the subject of a two-day workshop run by the Australian Institute of Aboriginal and Torres Strait Islander Studies in Canberra on 9-10 February. The workshop brought together people who have on-the-ground experience with existing agreements, or with the frameworks and thinking which are developing within each of the States and Territories. Participants discussed how Regional Agreements might evolve and what resources might be required to facilitate them. In some regions marine resources and fisheries management will be important; in others, agreements with mining companies and pastoralists, while in others management of forestry, and irrigation resources will be more at issue. All agreements will need to include different levels of government. The aim of the project is to develop practical briefing papers on the possibilities of Regional Agreements for use by all interested parties, and to produce a series of case studies on the situation in selected regions around Australia. Material from the project will be available in various stages from April. The full set of papers will be available towards the end of the year.

Examples of the agreements can be found in *Australian Indigenous Law Reporter* Vol.1 no 3 August 1996 pp 446-465; discussion of the issues can be found in: *ATSIC Regional Agreements Seminar, Cairns 29-31 May, 1995*. Canberra : ATSIC, 1995.; and *The way forward : collaboration and cooperation 'in country' : proceedings of the Indigenous Land Use Agreements Conference (26 - 29 September 1995, Darwin, Northern Territory, Australia)* edited by Gary D. Meyers. Perth, W.A. : NNTT and AGPS, 1995.

For further information on the Regional Agreements project contact the Native Titles Research Unit at AIATSIS on (06) 246 1153 or email: [ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au).

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### 4. National Native Title Tribunal

A new information service offering comprehensive details of all native title applications is now available on the Internet at <http://www.nntt.gov.au>. In February the National Native Title Tribunal launched its upgraded, interactive homepage with extensive information on claims and native title processes, including Tribunal casenotes (plain English summaries) of legal judgments and rulings on native title and related issues.

The Tribunal web site will be updated daily as new information becomes available, and a 'What's New' button will be added to keep the public informed of latest developments.

The NNTT publish a monthly bulletin titled Native Title Update. It lists applications lodged, applications accepted and objections lodged during the month. It is available gratis from NNTT by phoning (09) 268 7272 or 1800 640 501 (toll free WA only). A consolidated list of all claims called the National Native Title Tribunal Timeline will be updated daily and free of charge on the NNTT web site: <http://www.nntt.gov.au>. Hard copies are available but the following costs apply: \$130 per annum via fax every fortnight or \$260 by mail every fortnight.

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## 5. AIATSIS NTRU Issues papers

In response to the Wik decision the NTRU has published three Issues papers: *Co-existence of Interests in Land: a Dominant Feature of the Common Law* by Maureen Tehan, *Wik- the Way Forward*, by Rick Farley and *Lighting the Wik of Change* by Mark Love. These and future issues papers are available from our web site: [http://www.aiatsis.gov.au/ntru\\_abt.htm](http://www.aiatsis.gov.au/ntru_abt.htm).

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# NATIVE TITLE IN THE NEWS

(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.)

*Aus* = Australian  
*Ad* = Advertiser (SA)  
*CM* = Courier Mail (QLD)  
*CP* = Cairns Post  
*CT* = Canberra Times  
*Fin R* = Financial Review  
*HS* = Herald Sun (VIC)  
*Mer* = Hobart Mercury  
*LE* = Launceston Examiner  
*NTN* = Northern Territory News  
*SMH* = Sydney Morning Herald  
*Tel M* = Telegraph Mirror (NSW)  
*WA* = West Australian  
*WAus* = Weekend Australian  
*KM* = Kalgoorlie Miner

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# CLAIMS

## NSW

### Shellharbour [NNTT Ref# NC95/9]

NSW state government has approved the construction of the Shell Cove marina at

Shellharbour south of Wollongong, despite a native title claim by Korewal Elouera Jerrungarugh Tribal Elders Corporation for areas below highwater mark. (*SMH*, 4 Dec p7)

Before the Shell Cove marina project can proceed, developers and two Aboriginal claimant groups expect to meet early 1997 to discuss native title claims covering the intertidal zone, Shellharbour swamp and other Crown land. (*Illawarra Mercury*, 18 Dec, p14)

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## **South Coast [NNTT Ref# NC97/1]**

A native title claim has been lodged on behalf of the Dariwal people for land and waters between Wollongong and Ulladulla and west to Marulan. The area includes Crown land, State forests, timber reserve, national park, state recreation land and leased land within State forest and waters. (*SMH*, 9 Jan, p7) The application was lodged by Reuben Brown of the Korewal Elouera Jerrungarugh tribal elders group on behalf of the Dariwal; a part of the claim includes royalties for water, forestry and fisheries; and compensation for the proposed gas pipeline. (*Illawarra Mercury*, 10 Jan, p2)

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## **VIC**

### **Yorta Yorta [NNTT Ref#VC94/1]**

Lawyers for the pastoralists opposing the Yorta Yorta claim have advised their clients to expect a negative judgment following the High Court's Wik ruling. (*Age*, 3 Jan, pA5) the case will resume in the Federal Court early February but the state government, which is contesting the claim, will not present its case until August. (*Age* 6 Jan, p.A5)\*

Murray Shire Council believed there would be leases within the shire affected by the Wik decision. The shire has continued to maintain representation in the case on behalf of its residents and ratepayers. The Yorta Yorta claim hearing will continue throughout 1997, cross examination of the applicant's lay witnesses will start at Echuca on February 17, evidence of applicant's expert witnesses will start in Melbourne on May 5 and the case for the respondents will start in Melbourne on August 4. (*Deniliquin Pastoral Times*, 7 Jan, p5)

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### **Daylesford [NNTT Ref#VC97/1]**

The Werundjeri people who have claimed native title to land on which a Telstra tower is built, have impounded the tower and will call for tenders for its demolition. (*HS*, 12 Jan, p21)

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## **QLD**

### **Peel Island**

Gazettal of Peel Island as a National Park could not proceed due to a native title claim on the island. (*Sunday Mail (Qld)*, 8 Dec, p57)

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## **Southport [NNTT Ref#QC96/69]**

Negotiations are under way to build an Aboriginal theme park on the Southport Spit at the Gold Coast which would be jointly run by Aborigines and non-Aborigines as a business venture; Aboriginal leaders stress the cultural centre is a business proposal and is a separate issue to native title, although the site falls within the Gombemberri Ngarang-Wal Gold Coast native title claim which spans from the Coomera River in the north to the Tweed River in the south and to the continental shelf in the east. (*Sunday Mail(Qld), Jan 19, p39*)

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## **WA**

### **Swan Valley [NNTT Ref#WC95/81]**

The Swan Valley Nyungah Community's claim to 7000 parks and reserves lodged in December 1995 was accepted by the NNTT in August 1996; the claim covers metropolitan area south to Boddington and Pinjarra, north to Yanchep beach and north-east to Northam, York and Toodyay; spokesperson Robert Bropho said the 'claim was made to protect the areas so that everyone, black and white, could enjoy them'; a claim covering the Swan Brewery site has also been made but not yet accepted by the NNTT (*Sunday Times (WA), 15 Dec, p3*)

Lawyers for the Swan Valley Nyungah Community argued that work of installing pylons for a jetty at the old Swan Brewery site interfered with native title; an interim injunction was granted until the parties could come before the court. (*WA, 31 Jan, p.3*)

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### **Burswood Island [NNTT Ref#WC96/46]**

A claim on behalf of the Ballaruk people has been accepted by the NNTT; the claim covers vacant crown land and reserves on Burswood Island, including Burswood Park and land surrounding the Burswood Casino complex. (*WA, 9 Jan, p6*)

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### **Ord River Development Area [NNTT Ref#WC94/2]**

The Miriwoong and Gajirawoong claim over the Ord River development area is set down for a minimum four month Federal Court hearing starting in July; the claim covers 6350 sq km of the East Kimberley including land and water and if successful would be WA's first native title claim to be finalised. (*WA, 11 Jan, p28*)

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## **NT**

### **Larrakia claim [NNTT Ref# DC96/7]**

Larrakia lodge claim for undeveloped Crown land, parks and reserves in Darwin, Palmerston area; Larrakia spokesperson Bill Risk said they were claiming public

areas on co-existence principles. *(NTN, 2 Dec, p1)\**

NT Minister for lands, Mike Reed, said compensation to Larrakia could exceed \$100 million; he based this figure on the small area of Crescent Head in NSW for which \$500,000 was paid in compensation. *(NTN, 3 Dec, p2)\**

NT news editorial calls for changes to Native Title act to 'disallow' claims such as that of the Larrakia. *(NTN, 3 Dec, p8)*

NT news editorial claims ALP will lose electoral support because it is seen as a strong supporter of the Northern Land Council and Aboriginal rights. *(NTN, 4 Dec, p6)*

Bill Risk, spokesperson for Larrakia states the Larrakia claim is not an ambit claim and the NT government has pushed through a number of developments with no consultation with the Larrakia leaving no option but to seek compensation; the approach of the NT government will determine how quickly developments proceed; he stressed that the NT economy and the broader community benefits from joint mining ventures and tourism on Aboriginal land. *(NTN, 4 Dec, p10)*

NT government announced it will compulsorily acquire native title rights to the Wickham Point gas plant site thus removing the liability of the gas plant developers to a compensation agreement; this follows similar action to compulsorily acquire land under native title claim at the East Arm port site. *(NTN, 5 Dec, p2)*

NT ALP opposition leader Maggie Hickey stated that her opposition to the Larrakia claim was supported by her ALP caucus; and that an early election called on the issue would not benefit the Country Liberal Party. *(NTN, 5 Dec, p10)*

Larrakia people formally lodge claim for areas of vacant crown land, nature reserves, mangroves beaches, new Darwin port, part of corridor for the proposed Darwin to Alice Springs rail link and the site for a natural gas plant; the claim also seeks compensation for the extinguishment of native title in two residential developments. *(Age, 7 Dec, p3)\**

NT Chief Minister, Shane Stone, claimed Darwin residents may have to pay to visit their favourite beach if the Larrakia were successful in their native title claim, *(NTN, 9 Dec, p5)* however NLC chairman, Galarrwuy Yunupingu, said NT and federal laws ensured public access to beaches and this would not be affected by native title. *(NTN, 10 Dec, p4)*

NT Acting Sports Minister, Daryl Manzie, said the Larrakia claim could block development of the Marrara sporting complex; Northern Land Council chairman Galarrwuy Yunupingu denied the claim and said the NLC had approached the NT government several times to negotiate the Larrakia claim. *(NTN, 16 Dec, p6)*

In a lengthy article the NT Chief Minister Shane Stone gave his interpretation of the Larrakia claim and its effects on Darwin; these included the extent of the claim, what is meant by 'appropriate compensation', how the claim affects Darwin residents, what is meant by co-existence and the government's attitude to and views on the claim. *(NTN, 16 Dec, p10)* He later announced that the NT government would contest compensation for the Larrakia people. *(Aus, 26 Dec, p4)*

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## SA

Agreement has been reached between the Murray Darling Commission, the

Barkindji people, local landholders and NSW and SA governments which will result in the development of a management plan for Lake Victoria. The agreement recognises the cultural affiliation of the Barkindji people to Lake Victoria and commits the parties to the longterm protection of significant sites with the optimum use of the lake as a water source. (*Aus, 3 Dec, p4*)

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## **De Rose Hill [NNTT Ref# SC94/2]**

The Yankunytjatjara claim over parts of De Rose Hill Station, will be heard before the Federal Court in February following a breakdown in mediation before the NNTT. (*Ad, 23 Jan, p6*)

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# **NATIVE TITLE ACT AMENDMENTS**

In response to the Larrakia native title claim PM John Howard criticised what he regards as 'capricious' and 'extravagant' Aboriginal land claims; Mr Howard believes proposed amendments to the native Title Act would make it harder for such claims to proceed. (*Age, 3 Dec, A6*)\* he said that claims such as the Larrakia claim had potential to undermine the reconciliation and native title process; in response Justice French said that problems could be solved in the mediation or negotiation process. (*CT, 3 Dec, p3*)\*

Senator Eric Abetz, Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, tabled the Committee's seventh report which recommended the Parliament should proceed in adopting the proposed amendments to the Native Title Act; stating that 'this report refutes any suggestion that the proposed amendments to the Native Title Act are inconsistent with the Racial Discrimination Act.' (*Press release, 12 Dec*)

The ALP is developing a strategy on changes to the Native Title Act designed to counter expected government accusations that it is obstructionist and split on the issue however it would not accept changes to the principles enshrined in the legislation and rejected claims that legislative action was needed in response to the Wik decision. (*Aus, 2 Jan, p2*)

Frank Brennan believes the major challenge in 1997 for PM Howard is the amendment of the native title legislation whilst fulfilling a promise that it would be done 'in a manner that completely respects the provisions of the Racial Discrimination Act.' There will need to be more trust between the government and the Aboriginal representative bodies to negotiate a workable Native Title Act. (*SMH, 4 Jan, p21*)

Senior Liberal Party official, Mr Tony Nutt has been appointed chief adviser to Attorney General Daryl Williams to help oversee expected changes to native title laws. (*SMH, 5 Jan, p5*)

The Australian's political correspondent, John Short, analyses the problems for the ALP in opposing changes to the Native Title Act, and how the Government will exploit any divisions within the ALP on the issue. (*Aus, 6 Jan, p9*)

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# MINING AND NATURAL RESOURCES

## National

President of the Minerals Council of Australia, Mr Jerry Ellis, claims that 41% of Australian mining exploration was now offshore because of the uncertainty generated by native title claims. (*Age*, 12 Dec, pB3)

In an address to CEDA, Senator Parer, Federal Minister for Resources and Energy, said 'uncertainties surrounding the Labor Government's Native Title Act have been one of the key factors in limiting minerals industry's growth...the Act is one of the major reasons Australian companies are increasingly looking abroad.' (*Press release 30 January*) and (*Aus*, 31 Jan, p4)\*

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## NT

### Energy Resources Australia and Jabiluka

Senator Robert Hill announced public consultation meetings to discuss the draft environmental impact statement on the proposed Jabiluka uranium mine. (*Press release 29 Nov*).

ERA has delayed negotiations with traditional owners over its Jabiluka Uranium mining proposal and reported it remained confident it was in a strong negotiating position; ERA is conducting an environmental impact study at the proposed mine. (*NTN*, 2 Dec. p2).\*

Representatives from the ACF, Friends of the Earth and Environment Centre NT have renewed calls for an end to the proposed uranium development at Jabiluka. (*Press release 11 Dec*).

The Mirrar clan, traditional owners of the area of the proposed Jabiluka mine, remain opposed to the mine; media reports of division among traditional owners has resulted from the views put forward by clans categorised under the Aboriginal Land Rights Act (NT) as 'affected people'; Jacqui Kantona, spokesperson for the Mirrar, said 'affected people are consulted but it is the decision of the traditional owners which has over-riding influence.' (*NTN*, 16 Dec. p33).

ERA has agreed to wait for a social and cultural impact study of economic activity before it begins negotiations with traditional owners over the uranium mining at the Jabiluka mining lease it purchased from Pancontinental in 1991; the Mirrar people remain opposed to the mine. (*NTN*, 17 Dec, p10).

ERA's Environmental impact statement on the proposed Jabiluka mine was criticised by the ACF for failing to address key issues of opposition to the mine by traditional owners and the impacts the mine would have on the region. (*CT*, 11 Jan, p2).

Aboriginal traditional owners of the site where Energy Resources Australia proposes to go ahead with the Jabiluka uranium mine have rejected the company's draft environmental impact statement; both mine options canvassed in the draft EIS require consent of Aboriginal owners to the proposal agreed between the Northern Land Council and the mine's former owner, Pancontinental. (*Fin R*, 14 Jan, p3).\*

Sections within the Federal Dept. of the Environment have warned that uranium mining at Jabiluka could damage the region's World Heritage values, rainforests and affect tourism. (*SMH, 31 Jan, p5*).\*

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## **Nhulunbuy**

The Northern Land Council lodged an application with the Federal Court to invalidate a lease on land at Nhulunbuy which includes 26 homes and the Gove Yacht Club; the NLC said the land was leased as a construction site to Nabalco and the lease expired in 1989. (*NTN, 13 Dec p4*).

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## **Marine resources**

Plans for an aquaculture project in Darwin by NSW based Phelps-Paniizza Investment Group have been shelved due to uncertainty with native title; the developers also accused the Northern Territory Government and Aboriginal representatives of not knowing how to handle development applications on land which may be subject to native title claims. (*WA, 15 Jan, p34*)

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## **WA**

### **Murrin Murrin**

The Goolburthanoo and Bibila-Lungutjara people have appealed against recommendations made by the EPA in relation to the Anaconda Nickel's Murrin Murrin project; the appeal is on heritage and cultural grounds which were not considered by the EPA. (*WA, 19 Dec, p46*) Legal advice to Anaconda indicates that the Goolburthanoo and Bibila-Lungutjara appeal is justified and if upheld by the court Anaconda might have to repeat part or all of its environmental assessment of Murrin Murrin nickel deposit. (*WA, 17 Jan, p33*)

Wangi elder, Mr Arnold Franks, said he was becoming increasingly disillusioned with mining companies; he had agreed to co-operate with mining companies and oppose what he described as 'fallacious' native title claims but mining companies had not delivered on a promise to provide jobs and training to young Aborigines; prospectors he had asked to file a claim on his behalf pegged the site for themselves including neither his name nor that of his community on the claim. (*Sunday Times (WA), 5 Jan, p17*)

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## **QLD**

The Qld Dept of Mines and Energy has issued 800 mining leases over non-freehold land since the Native Title Act was passed in 1994. Legal sources warned that these leases could be made invalid by the High Court's Wik decision. Companies are suggesting that any compensation which may arise must be paid by the state government, which issued the leases. (*CM, 3 Jan, p5*)

Noel Pearson said companies holding 800 Queensland mining leases must be forced to negotiate with Aborigines under the Native Title Act because they bought the leases knowing Aborigines could have legally enforceable rights over them.

(*CM, 9 Jan, p2*)

Lawyer Colin Hardie who acts for the Mitakoodi/Juhnjar Aboriginal Community said lawyers were investigating some of about 800 Queensland mining leases issued since 1994 which might be subject to compensation claims in the wake of the Wik decision. (*CM, Jan 18, p2*)

Miners in North Qld., say the state government's freeze on mining leases was putting the companies 'into jeopardy'. (*CM, 30 Jan, p25*)

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## **Ernest Henry**

Mitakoodi/Juhnjar Aboriginal Community said documents show the approval for the copper-gold mine near Cloncurry was obtained by pressure on government and before environmental impact studies were completed; claim for compensation under the Native Title Act against Ernest Henry has been lodged. (*CM, 20 Dec, p2*)

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## **Century Zinc Mine / Waanyi**

Co-ordinator of the Carpentaria Land Council accused ATSIC and the Federal Government of conspiring to remove the council from negotiations over the Century Zinc project; Mr Yanner's claims came as the first round of negotiations commenced under the right to negotiate provisions of the Native Title Act. (*Aus, 3 Dec, p.4*)

Negotiations over the Century Zinc project to continue in the new year with February 13 the deadline for a negotiated agreement. (*Aus, 26 Dec, p4*)

Pasminco Ltd has agreed to pay RTZ-CRA Ltd \$345 million for Century and the nearby Dugald River zinc deposit; the announcement of the purchase comes just one day after Queensland's Government put a halt on development of all pastoral leases, and stopped issuing and renewing most new mining leases in response to the High Court Wik decision. CRA has said native title considerations were not a key factor in its decision to sell the Century project. Carpentaria Land Council spokesperson Mr Murandoo Yanner who has opposed the Century project said that Aboriginal groups now wanted the Right to Negotiate process extended by at least six months. (*Fin R, 10 Jan, p1*)\* However the three Aboriginal groups which have native title claims over the area had not requested an extension of time and Mr Rick Farley, lead member of the National Native Title Tribunal's negotiations said most of the project team from Century will transfer from CRA to Pasminco to ensure continuity of negotiations and are committed to achieving the negotiated outcome by the February 13 deadline. The Queensland Government's response was to raise the prospect of legislating to end the impasse over the project. (*CT, 10 Jan, p15*)

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## **Alcan**

Alcan is working towards approval for the Ely bauxite deposit which is next to Comalco's Weipa bauxite mine; Alcan was granted a mining lease on vacant Crown land in 1965 and is negotiating with the local Aboriginal community who hold a deed of grant over land where Alcan wants to build a port; Alcan expects government and Aboriginal agreement to the mine by April. (*CM, 30 Jan, p25*)\*

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## **Marine resources**

The Queensland Fisherman's Organisation and the Cape York Land Council had been holding talks for more than 12 months and aim to have a regional agreement by mid 1997 on fishing rights in marine areas subject to native title claims. (*W Aus*, 4 Jan, p6)

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## **SA**

Government and industry hopes of a mining boom for South Australia have suffered as a result of the Wik decision; unlike other states there was already a statutory right in SA for Aborigines to hunt and gather on pastoral leases but Government and industry want a comprehensive solution to the uncertainty rather than a mine by mine approach. (*Ad*, 16 Jan, p4)

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# **GENERAL NATIVE TITLE ISSUES**

## **National**

The Attorney General, Hon. Daryl Williams announced the appointment of two part time members of the NNTT: Professor Douglas Williamson will be based in Victoria and Mrs Joanna Kalowski in NSW. (*Press release 6 Dec*) The NNTT has received 448 applications throughout Australia since the Native Title Act came into force; 228 of these were lodged in 1996. According to Justice French this is 'partly due to the apprehension about what changes to legislation will do to peoples rights if they don't get in early.' (*WA*, 14 Dec p40)

Michael Lavarch reported that compensation for native title may develop through personal injury rather than property law, citing a recent National Native Title Tribunal determination rejecting the view that compensation should not exceed freehold value, and the Crescent Head agreement which included an uplift factor to the base of freehold value to assess compensation. (*Aus*, 21 Jan p13)

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## **NT**

Katherine Combined Aboriginal Organisations may consider lodging a claim to unoccupied Crown land in the Katherine area if discussions with NT government about town camps was not satisfactory; they want land to establish four new town camps around Katherine. The government believed town camps were not the answer and that people should be living on their communities. (*NTN*, 13 Dec, p4)

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## **QLD**

Natural Resources Minister Howard Hobbs said the state Government had

stopped issuing permits and licences on leasehold land on advice from Crown Law; Cape York Land Council said Mr Hobbs should take advice from Crown Law with a grain of salt and sit down and talk to Aboriginal people. (*CM, 9 Jan, p 1 and 2*)\*

Courier Mail's editor believes that Government should be invited and involved in any summit and negotiations; this would assist in avoiding any further provocative statements such as those of Natural Resources Minister Howard Hobbs. (*CM, 9 Jan, p16*)

New mining and exploration licences and leases on non-freehold land were frozen by the Queensland Government; the move follows the freezing of quarry permits and water licences on leasehold land; Queensland Farmers Federation said the state Government was erring on the side of caution; Cape York Land Council stressed their belief that co-existence could occur. (*CM, 10 Jan, p6*) Aboriginal leaders have described the Queensland Governments tactics as scaremongering and encouraging pastoralists to breach their leases. (*WA, 10 Jan, p.6*)\*

Ron Castan QC believes that the Queensland Government's call for a freeze on all new activity on leased farming land is irresponsible: 'in a gesture that is breathtaking in its audacity the State Government has grossly misled the public about the effects of the [Wik] decision. This is the ultimate example of ensuring that "uncertainty" prevails', (*Aus, Jan 10, p17*) a view shared by the editor of the Canberra Times. (*CT, 13 Jan, p10*) In response to the freeze, North Queensland pastoralist Mr Jerry Burnett is considering legal action against the Queensland Government for its refusal to issue title deeds to his pastoral lease. (*CT, 13 Jan, p3*)

The Financial Review is critical of the Queensland Government's poor use of the 'right to negotiate' and 'future acts' clauses provided by the Native Title Act. (*Fin R, 13 Jan, p44*)

Queensland Government officials have defended their stance to put all leasehold land dealings and licensing on hold despite news that it was done without official written Crown Law advice, the revelation comes as a senior government source said the 'closedown' of land dealing was designed partly to send a message to Canberra. (*CM, 15 Jan, p1*)\*

The Fraser Island Land Council want the Queensland Government to hand over the \$6 million tourist levy it collects each year from visitors to the area; John Lee Jones, spokesperson for the Land Council, said 99% of Fraser Island's 800,000 ha were unextinguished native title with about 1000 ha under freehold or pastoral leases. (*CM, 30 Jan, p7*)

The Cape York Land Council offered not to launch any new native title claims or be liable for compensation for property improvements in a set of principles to the Cattlemen's Union based on the Cape York Agreement. The principles require that there is no extinguishment of native title on pastoral leases or disregard for native title rights. (*CM, 25 Jan, p8*).

The Queensland Government has warned that uncertainty over the status of leasehold land could halt \$3 million a day worth of major capital works. (*Fin R, 31 Jan, p4*)

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## WA

West Pilbara Land Council executive officer Jill Churnside said pastoralists have little to fear from Aborigines who mainly wanted access to pastoral stations to continue traditional hunting and religious practices. (*WA, 11 Jan, p28*)

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## VIC

Victorian Aboriginal groups are considering a regional agreement approach to native title issues that could eliminate claims on individual landholders in return for agreements with government on service delivery, funding and access to resources. (*Age*, 15 Jan, pA1 and A2) Aboriginal leaders and the Premier Jeff Kennett discussed native title and options for a state agreement for indigenous rights on pastoral leases. (*Age*, 27 Jan, pA3; 30 Jan, pA4)

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## WIK DECISION

High Court due to hand down decision in the Wik case on Monday (23rd Dec); which will decide the key issue of whether pastoral leases automatically extinguish native title as a matter of law. (*Fin R*, 19 Dec, p3)\* 42% of Australia is covered by pastoral leases. (*Fin R*, 23 Dec, p2)\*

Press releases from a number of bodies including the Indigenous Land Corporation, Human Rights and Equal Opportunity Commission, Aboriginal and Torres Strait Islander Social Justice Commissioner and ACFOA Human Rights Office all welcomed the High Court's decision and urged the government to recognise the rights of indigenous Australians. (*Press releases 23 December, 24 December, 29 December*) The National Farmers Federation claimed the decision will create more uncertainty for pastoralists and others and called for the government to enact legislation which would allow pastoral leases to extinguish native title. (*Press release 23 December*) The Prime Minister expressed disappointment with the decision in the Wik case which he believed appears to overturn one of the principles on which the community's understanding of native title had proceeded. (*Press release 24 December*) Mr Howard foreshadowed an overhaul of the Native Title Act in the wake of the Wik decision. (*CT*, 25 Dec, p1)

Age editor discusses the Wik judgment and concludes: 'unsatisfactory though it may seem to those who prefer clear and neat answers to complex legal, political and moral questions, the High Court decision represents a tolerable compromise.' (*Age*, 26 Dec, pA14) The Australian's editor stresses need for negotiated and regional agreements, (*Aus*, 26 Dec, p8) a view also held by Rick Farley in the same paper. (*Aus*, 26 Dec, p9)

Any bid by the Federal Government to use legislation to resolve legal problems resulting from the High Court decision could face defeat in Senate. (*Age* 26 Dec, p1); Senator Dee Margetts said Green Senators would reject a government move to extinguish native title. (*CT*, 26 Dec, p5)

Henry Reynolds discusses the Wik judgment in the context of the history of land tenure and land law in Australian history: 'the High Court decision to preserve native title rights on pastoral leases is deeply rooted in, and sharply aware of, the realities of history.' (*SMH*, 27 Dec, p13) The editor of the SMH says 'the reaction in some quarters to the High Court's judgment has been intemperate and unhelpful.' (*SMH*, 27 Dec, p18)

Graziers in Cape York want to pursue negotiated settlements rather than litigation, (*SMH*, 27 Dec, p1) whilst the Prime Minister announced that he would consider changes to the Racial Discrimination Act to protect pastoral leases against native title claims. (*Aus*, 27 Dec, p1)

Whilst State Premiers called for extinguishment of native title, Professors Garth Nettheim and Hal Wootten stated that compensation would be required and in some cases this would require substantial amounts, (*SMH*, 28 Dec, p1) a view supported by Macquarie University law Professor Tony Blackshield. (*Aus*, 4 Jan, p6)

President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, said 'the pressure on the Government to override the [Wik] decision is ill-conceived and lamentable' and called for urgent high-level consultations between the Government and indigenous leaders about any amendments to the Act. (*CT*, 30 Dec, p3)\*

The Deputy Prime Minister, Mr Tim Fischer, said he supported legislation that would give certainty of title for pastoral leaseholders; he also would not rule out a referendum on native title. (*Age*, 31 Dec, p1)\* Victorian Premier, Mr Jeff Kennett, called for a double dissolution election if the Senate blocked legislation wiping out native title on pastoral leases. (*Fin R*, 31 Dec, p1)\*

The Courier Mail's editor believes Prime Minister Howard was decidedly non-committal in his new year message in relation to native title. (*CM*, 2 Jan, p14) The editor of the Age believes 'it is reassuring that, although Mr Howard shied away from filling in the details of a Government response, he has put on record his recognition that fundamental issues of justice are involved.' (*Age*, 2 Jan, pA10)

Noel Pearson has defended the role of the High Court and the separation of powers and described the attacks on the High Court by national leaders as 'unseemly'; he states 'there is an unwritten convention that the executive should not criticise the judicial arm.' (*Aus*, 2 Jan, p11) Historian Henry Reynolds claims that the historical record suggests that pastoral leases were never intended to extinguish native title and that mutual land use was envisaged and occurred. (*CM*, 3 Jan, p11)

In response to the Wik decision the NT government wants the Aboriginal Land Fund money re-allocated because the court found pastoral leases had extinguished less land than previously thought. The money should be used to negotiate regional agreements. (*Fin R*, 3 Jan, p3) The editor of the Australian criticised the State premiers' response to the Wik judgment as 'heated' and believes that 'new energy, goodwill and leadership must be devoted to negotiation.' (*Aus*, 4 Jan, p16) The editor of the Canberra Times described the reaction of lobbyists and state premiers reaction as hysterical and one which will cause 'major embarrassment in the world and poison the reconciliation process for years.' (*CT*, 5 Jan, p6)

Rural lobbyists fear that the High Court's Wik decision will force banks to re-evaluate their loans to pastoral lease holders. (*Aus* 6 Jan, p3) Meanwhile the president of the National Farmers Federation, Mr Donald McGauchie said farmers would not negotiate with Aborigines over native title rights on pastoral leases, believing agreements between farmers and Aborigines were not legally binding and would not resolve the land ownership questions. (*Age*, 6 Jan, pA1)

Claims by state and national farming bodies that banks would be reluctant to lend to the rural industry because of native title uncertainty, have been revealed as misleading; the Australian Bankers' Association told the National Farmers Federation in June that banks could not identify circumstances where native title would conflict seriously with their interests as security holders. (*WA* 8 Jan p4 and 9 Jan, p12)\*

Acting Prime Minister, Mr Tim Fischer, expressed doubts about extinguishing native title reflecting a growing view among industry groups, some State Governments and experts that the Federal Government should consider ways of legislating to manage the implications of the Wik decision, rather than risk further

legal uncertainty by seeking to override it; (*Fin R*, 7 Jan, p1 and 7) a view not held by Attorney-General and Minister for Health in the Northern Territory, Denis Burke: 'the uncertainty created by the Wik decision can only be resolved by legislating away that uncertainty or by years and years of litigation.' (*Aus*, 7 Jan, p11)

President of the Queensland National Party, David Russell QC, claims that pastoral lessees have been dispossessed and lists the principles on which any legislative resolution should be based, including a proposal to convert all pastoral leases to freehold. (*Aus*, 7 Jan, p11) The West Australian Government is preparing to push the Federal Government to extinguish native title claims over all pastoral leases by resurrecting draft legislation discarded by the Labor Government in 1993 which provided that outcome. (*Aus*, 8 Jan, p3)

Cape York Land Council to call national summit in Cairns to address issues arising from the Wik case. (*SMH* 9 Jan, p9)\* Meanwhile Acting Prime Minister Mr Fischer promised an urgent response to the Wik decision after the Queensland Government complained that land and natural resource administration in the state was paralysed. (*Ad*, 9 Jan, p7)\*

The issue of compensation payments to native title holders in the event of extinguishment is under dispute, there is conflict between federal officials and their counterparts in Western Australia and the Northern Territory who believe compensation payments would be manageable as they would be spread over a number of years. (*Aus* 9 Jan, p4)

Professor Marcia Langton analyses the hysteria that has come from some industry groups and State Premiers in response to the Wik decision and calls for a process of negotiating mutually agreeable principles of coexistence. (*Fin R*, 10 Jan, p18)

State and Commonwealth officials met yesterday in their first step to preparing a response to the [Wik] judgment; Western Australia and Queensland have received similar advice indicating that all but freehold land is now open to native title claims. (*Aus*, 11 Jan, p1 and 2) However political observers believed the Queensland Government is set to soften its hardline stance on native title and agree to work within the High Court decision on Wik. (*CM*, 11 Jan, p 1)

Acting Prime Minister, Mr Fischer, accused the four majority judges in the Wik case of unacceptable judicial activism focussing his attack on the newest judge Justice Michael Kirby; he said all four judges were guilty of making law rather than applying it. (*SMH*, 11 Jan, p1) In the same speech he also claimed that Aboriginal pastoral companies could face native title claims from other Aboriginal groups. (*DT*, 11 Jan, p14)\*

ATSIC Commissioner Geoff Clark said State Governments could avoid compensation payments if they negotiated with indigenous people. (*Age*, 13 Jan, pA3) He also said federal and state governments had hidden agendas in the debates over native title and were excluding ATSIC from discussions. (*CT*, 13 Jan, p3)\*

Acting PM Tim Fischer, suggested the Government's response to the Wik decision required 'certainty clarity and consistency' for pastoralists (*CM*, 16 Jan p2) and would be a national one made by the Commonwealth after consultation with the States (*Fin R*, 15 Jan p3). The WA government which originally called for validation of invalid pastoral leases indicted its willingness to consider federal legislation which defined and validated pastoral lease rights (*Fin R*, 15 Jan p3). The NT government pushing for a quick response from the federal government said Mr Howard should consider a double dissolution election if necessary (*CM*, 14 Jan p2). NSW farmers called for either legislation to guarantee pastoral leases over native title or proof to pastoralists that their right to their land was inalienable.

(Tel M, 15 Jan p1)

In the lead up to the Wik summit, Aboriginal leader Noel Pearson indicated that simplification of native title negotiation rights for small mining projects was supported by indigenous groups (CM, 16 Jan, p6). The mining industry wants the Government to recognise agreements negotiated outside the Native Title Act provisions. (CM, 14 Jan, p2)

Garth Nettheim reviewing the reaction to the Wik decision to date in a SMH feature article (SMH, 14 Jan, p13) suggested a calm consideration which included not only political leaders but indigenous Australians would be more beneficial than an instant response.

In a divided response by the ALP to the Wik decision, Queensland Opposition leader, Peter Beattie said he would not rule out extinguishment of native title. However federal Opposition spokesperson Daryl Melham rejected extinguishment as an option. (Aus, 15 Jan, p2)

States most affected by the Wik decision would meet to present a unified view to the Federal Government. (CM, 17 Jan, p.2)\* Acting Prime Minister, Mr Fischer, endorsed the views of state governments for extinguishment of native title on pastoral leases and the Queensland decision to freeze activity on leasehold land. (Aus, 18 Jan, p2)

The Australian Institute of Valuers and land Economists has criticised what it considers ill-informed comments about the Wik decision; the AIVLE blames various stakeholders affected by the decision for causing misunderstanding among valuers, financiers, agents and property investors, and for raising fears about falls in land values: 'the Wik decision should not lead to a general devaluation of pastoral leases.' (Aus, 18 Jan, p1 Property section)

The Human Rights and Equal Opportunity Commission has reiterated its call for the Federal Government to enter into negotiations with indigenous leaders before considering amendments to the Native Title Act in the wake of the Wik decision.... 'the only way any practical difficulties relating to land use can be overcome is through constructive and meaningful negotiations..' (Press release 20 Jan)

The Western Australian and Northern Territory governments are pushing a plan to give Aborigines access rights to pastoral leases under legislation but wipe out the common law right for native title and farms to co-exist. (Fin R, 20 Jan, p3)\* Queensland Premier Mr Borbidge secured Western Australian support to press the Federal Government to ensure all existing pastoral leases extinguish native title. (Ad, 20 Jan, p6)\* Australian Mining Industry Council head, Mr Campbell Anderson, said legislative certainty of title was needed for property owners...this could be done without extinguishing native title, while remaining consistent with the Racial Discrimination Act. (Age, 20 Jan, pA2)\*

Federal Cabinet has been warned by the Attorney-General's Dept. that any legislation to extinguish native title on pastoral leases would be open to legal challenge and could lead to massive compensation claims. (Age, 20 Jan, pA1) Meanwhile former Attorney General Mr Michael Larvach, a special counsel on native title, said support for a sunset clause on native title was misguided and flawed, such a clause would introduce racial discrimination and the spectre of extensive Commonwealth compensation. (CM, 20 Jan, p2)

The editor of the SMH believes the 'decision not to send a Federal minister to this weeks Wik summit in Cairns is a sign that the voice of Aborigines on native title issue does not make a compelling call on the Howard government.' (SMH, 20 Jan, p14)

Aboriginal leaders criticised the federal government for not sending a representative to the Wik summit to be held 22 Jan (*WA, 21 Jan, p4*) and the ATSIC Chairman said Aborigines were happy to negotiate on the Wik decision but extinguishing native title rights on pastoral leases was 'out of the question'. (*CM 22 Jan, p1*); Noel Pearson said the goal of the Cairns Wik summit was to find 'pragmatic and workable solutions to the problems raised by the Wik summit'. (*SMH, 21 Jan, p7*).

On 20 January the Prime Minister called for a meeting of state and federal leaders to be held on the 22 January to discuss the Wik decision (*Aus, 21 Jan, p1 and 4*)\*. The State Premiers were seeking support for some extinguishment of native title. (*Aus, 22 Jan, p6*)\* The WA Premier said states would seek a guarantee that at least 75% of any compensation costs would be met by the Commonwealth (*Ad, 21 Jan, p2*) The Victorian Premier called for federal legislation that would allow state governments to negotiate directly with Aboriginal communities without the use of lawyers (*Age, 22 Jan, pA6*).

The Age reported that federal government sources said the government had ruled out extinguishment of native title. (*Age, 21 Jan, p3*) The National Native Title President said the government was considering a tribunal proposal for an inquiry into native title and pastoral coexistence which would consider provisions for statutory access clause as an alternative but not substitute for native title rights. (*Aus, 22 Jan, H6*)

Peter Yu, Executive Director of the Kimberley Land Council, argues that there is a growing consensus in the indigenous community in favour of regional agreements. (*Aus, 22 Jan, p11*)

While Mr Court linked uncertainty over native title to unemployment, ACOSS and Uniting Church leaders said it would oppose extinguishment of native title or denial of land rights. (*WA, 22 Jan, p1*). The United Graziers Association of Queensland oppose regional agreements as a method of addressing native title claims on pastoral leases (*Press Release, 21 Jan*) but the Cattlemen's Union endorsed the Cape York regional agreement, saying legislation alone was not the solution. (*CM, 23 Jan, p6*).

Aboriginal leaders are unlikely to agree to validation of pastoral and mining leases because of inadequacies in the compensation process. Noel Pearson said an alternative assessment method was needed for assessing claims. (*SMH, 25 Jan, p4*)

The Opposition leader, Kim Beazley, called for a bipartisan response to the Wik decision. He ruled out support for changes to the Racial Discrimination Act and extinguishment of native title rights but said the Opposition would consider amendments to the Native Title Act to clarify miners' and pastoralists' rights. (*Aus, 27 Jan, p2*). Democrats leader Cheryl Kernot accused the Prime Minister of using the Wik decision for political gain and for not sending a representative to the Wik summit. (*Mer, 25 Jan, p8*)

Kimberley MLA Ernie Bridge said the issue of native title was becoming 'money game' and urged Aboriginal elders to be more involved in the debate. He said they have the 'most important knowledge but least resources' to participate; Fred Chaney, a former Fraser government minister and member of the NNTT said the Wik and Mabo decisions indicated the need for a 'real dialogue' between Aboriginal and non-Aboriginal interests. (*SMH, 25 Jan, p17*)

The Cairns Wik summit drew up a list of five principles relating to future talks with the Howard government; the non extinguishment of native title, no amendment to the Racial Discrimination Act, respect for the High Court's native title decisions, resolution through negotiation and agreements and further negotiation over

amendments to the Native Title Act (*Fin R*, 28 Jan, p7)\*.

Lois O'Donoghue, in her first speech since retirement from ATSIIC, warned that the Sydney 2000 Olympics could be disrupted if Aboriginal rights were undermined. She said Wik should not be regarded as a source of alarm but a 'creative opportunity to break out of the national impasse on indigenous issues'.(WA, 30 Jan, p4)\*

The National Farmers Federation want certainty in the form of validation of pastoral leases although they have moved away from their initial call for extinguishment of native title.(Age, 31 Jan, p5)

The Foreign Minister's request for a human rights clause in an international trade agreement with the EU to be removed raised concern that the Government may be preparing for amendment to the Racial Discrimination Act (WA, 31 Jan, p6).\*

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## RECENT PUBLICATIONS

**Blackshield, S.** 'Crescent Head Native Title Agreement', *Aboriginal Law Bulletin* Vol 3, no. 88, January 1997: 9. The author describes the history and outcome of the agreement which involves the first successful resolution of a claim under the *Native Title Act 1993* (Cwth).

**Willhelm, E.,** 'Queensland pastoral leases and native title: *Wik Peoples v Queensland*. Casenote', *Aboriginal Law Bulletin*, Vol 3, no. 89, February 1997: 23-26. The article provides an overview of the High Court case of 23 December 1996 which found that native title and pastoral leases may co-exist.

**Galarrwuy Yunupingu (ed.)**, *Our Land is Our Life: Land Rights Past Present and Future*, University of Queensland Press, St. Lucia Qld., 1997. This edited collection of papers written by Indigenous Australians was launched by the Governor-General in February.

**Deane, Sir William, Governor-General**, *Some Signposts from Daguragu. The Inaugural Vincent Lingiari Memorial Lecture*, Council for Aboriginal Reconciliation, AGPS, 1997. The speech was delivered on 22 August 1996 at the Northern Territory University, Darwin to mark the 30th anniversary of the 1966 Wave Hill Strike.

**Canada. Royal Commission on Aboriginal Peoples**, 1996. This five volume report makes wide ranging recommendations on indigenous rights. It is available on the Internet at <http://indigenous.bc.ca> and is also to be published in CD Rom format. A summary of recommendations is listed in the *Aboriginal Law Bulletin* Vol 3, no. 88, January 1997: 19.

**Ray, A.J.** *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People*, Toronto, Lester Publishing, 1996. Recommended for its coverage of the history of Canada's indigenous peoples including the struggle for recognition of land rights.

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This newsletter was prepared by Coral Dow. For further details contact:

[Anne Pyle](#)

NTRU

AIATSIS GPO Box 553, Canberra 2601

[ntru@elc.aiatsis.gov.au](mailto:ntru@elc.aiatsis.gov.au)

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