



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

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NATIVE TITLE NEWSLETTER

No. 1/98

May 1998

NATIVE TITLE IN THE NEWS DECEMBER 1997 - JANUARY 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

DT = Daily Telegraph

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

ST = Sunday Telegraph

Tel M = Telegraph Mirror (NSW)

WA = West Australian

WAus = Weekend Australian

APPLICATIONS

ACT

Ngunawal [NNTT Ref#AC97/1]

The National Native Title Tribunal has accepted a native title application over a large area of the ACT for consideration. The claim excludes residential areas but covers areas such as the Namadgi National Park and Tidbinbilla Nature Reserve. (*Aus*, 16 Dec, p2) Residents of

Canberra affected by the application were invited by the NNTT to register their interest. (*CT, 16 Jan, p5*)

New South Wales

Gumbangirri People [NNTT Ref#NC97/34]

An application has been lodged with the NNTT by the Gumbangirri people for areas covering the New England Tablelands. The application has not yet been accepted. (*Bellinger Courier-Sun, 23 Dec, p1, 3*)

Yeagl, Bundgalung and Gumbaynggirr peoples [NNTT Ref#NC96/38]

The Yeagl, Bundgalung and Gumbaynggirr peoples' application for native title over the waters of the Clarence River, which was accepted for mediation on 21 August 1997, has been amended to exclude any ocean waters. The application was submitted in response to a Section 29 Notice and is intended to protect the rock reef at the mouth of the river, known as Dirrangun, from excavation by the Department of Land and Water Conservation. (*Daily Examiner – Grafton, 12 Jan, p 1, 3*)

Victoria

Dja Dja Wrung [NNTT Ref#VC97/18]

The Dja Dja Wrung people have lodged a native title application over a 185ha site near Bendigo in response to a commercial application for a license over the Crown land. The application specifies right to land, waters and resources. (*HS, 11 Dec, p15*)

Queensland

Hopevale, Warra People [NNTT Ref#QC96/15]

An agreement for a permanent mediated settlement of native title was ratified in Cairns. Representatives of 13 traditional clan groups lodged a native title application over a 100,000ha around the Hopevale area, about 160km north of Cairns. (*CM, 8 Dec, p2*)* The Queensland Government has consented to the native title determination, which acknowledges the rights of industry and commercial land users. (*Fin R, 8 Dec, p3*)*

Wakka Wakka Jinda [NNTT Ref#QC97/60]

Gayndah Mi Mi Waka Waka descendents have disputed the Wakka Wakka Jinda claim over areas of the Gayndah shire and surrounding areas. Both groups wanted to assure the Ganydah community that they did not want to take over the land but wanted to have access to land to look after sites of significance. (*Central and North Burnett Times, 15 Jan, p1*)

Kudjala (Gudjala) and Jirandali (and/or Mitjumba) people [NNTT Ref#QC98/1]

The Inland Land Council, on Behalf of the Kudjala and Jirandali peoples, has lodged a native title application over two northwest Queensland national parks – White Mountains and Great Basalt Wall. The application does not include any freehold or residential land. (*CM, 17 Jan, p.6*) The Dalrymple Shire announced that it will not go ahead with a proposed eco-tourism venture in White Mountains National Park because of the native title application. (*Northern Miner, 20 Jan, p3*)

Western Australia

Nanda [NNTT Ref# WC94/7] [NNTT Ref#WC96/111]

Two groups of Aboriginal people contesting for native title over an area between Kalbarri and Shark Bay have agreed to form a single claim over about 31,000sq km, encompassing

Murchison House pastoral station, Kalbarri National Park and extending 12 nautical miles into the sea. (*WAus, 16 Dec, p11*)

Northern Territory

Croker Island [NNTT Ref#DC94/6]

Justice Howard Olney is hearing the application by Aboriginal traditional owners from seven clans to the seas around Croker and adjacent Islands. The application, over about 2000sq km of waters in both Territory and Federal jurisdictions, is also over the sea bed, subsoil, all living organisms in the water and a column of air above the water. (*NTN, 2 Dec, p6*)

South Australia

Eringa [NNTT Ref#SC96/3]

The public notification period has begun for the Eringa application over pastoral leases and the Witjira National Park, totaling 25,444 sq. km, near the SA-NT border. The application was officially accepted by the NNTT in February 1997. (*Ad, 15 Jan, p29*)

MINING AND NATURAL RESOURCES

National

In a new community based approach, mining company WMC has restructured its policy on Indigenous issues by devolving management authority directly to business units affected by native title. (*Aus, 16 Jan, p. 23*)

New South Wales

Successful native title negotiations between Aboriginal people and the AGL facilitated a \$55 million gas pipeline in central western NSW. Representatives of the Aboriginal people stated this agreement highlights the workability of the *Native Title Act*. The agreement also creates employment opportunities for Wiradjuri and Wongaibon people who will be hired to ensure the protection of their cultural artifacts and sites on the pipeline route. (*SMH, 15 Dec, p7*)

Western Australia

Anaconda Nickel has reportedly excised areas from their Murrin Murrin project site after disputes with the Bibila Lungutjarra and Goolburhunoo peoples over the agreement reached last year. (*WA, 20 Jan, p9*)* The Henry Walker Group has secured the contract for the Murrin Murrin project, from Anaconda and Glencore. Henry Walker will enter a joint venture with the Aboriginal and Torres Strait Islander Commercial Development Corporation. The CDC plans to divest its stake in the joint venture to the Aboriginal people of the Murrin Murrin region. (*FinR, 28 Jan, p20*)

Mineral Commodities' White Foil project near Kalgoorlie hopes to resolve native title issues to allow production early next year. One of the two leases over the gold deposit is currently subject to three native title applications, the other, ten. (*Aus, 26 Jan, p32*)

Queensland

The Mitakoodi – Juhnjar people have challenged the validity of the Ernest Henry copper gold mine in Queensland in the Federal Court. They claim the leases for the mine granted by the Queensland Government is not valid, as it did not follow the processes of the *Native Title Act*. (*Aus, 2 Dec, p9*) The validity of more than 500 Queensland mining leases issued between January 1994 and December 1996 could be called into question if the injunction is granted. (*CM, 3 Dec, p2*)*

Queensland Department of Mines and Energy have revealed that more than 1000 applications for mining exploration have been stalled due to State Government policy not to grant any licenses or permits over any land that is not under freehold title. DME Director of resource development said that companies had switched their attention to land over which they already hold leases. *(CM, 8 Jan, p23)*

South Australia

Manna Hill Mining Company confirmed it had become the first mining company in South Australia to be granted a mining lease on pastoral land since the Wik decision after successful negotiations with three native title claimant groups – from the Kuyani and Adnyamathanba people - over land north of Manna Hill. The agreement includes training and employment and royalties. *(Ad, 16 Jan, p5)**

AMENDMENTS

The Executive Director of Minerals Council criticised Labor's alternative Amendment package. *(Media Release, 1 Dec)*

The Senate blocked the Governments proposed six-year sunset clause, a key element of the 10-point plan, with the support of Senator Harradine. *(Aus, 2 Dec, p1)**

The National Farmer's Federation is planning a series of test cases regardless of whether the Amendment Bill eventually passes the Senate. *(SMH, 3 Dec, p10)*

Leader of the Opposition, Mr Kim Beazley, National Indigenous Working Group spokesperson Peter Yu, and Cape York Land Council Chair Noel Pearson, announced that Labor would support an amendment to confirm protection of freehold properties, but argued that the High Court had already protected them. *(WA, 5 Dec, p4)**

On 1 January, the Australian Archives released Cabinet Records from 1967, which include records of the 1967 Referendum. These documents may be relevant in light of the foreshadowed challenge to the Native Title Amendment Bill, if passed. The government claimed that the papers support their view, that the constitutional power to make laws for the people of any race can be used prejudicially. *(FinR, 6 Jan, p10)** Others have argued that the documents clearly reveal that non-discrimination was the primary purpose behind the referendum and was certainly the basis upon which the public campaign was put. *(Age, 7 Jan, p A11)*

Acting Prime Minister, Mr Tim Fischer, released a government document called 'Native Title Made Easy', setting out the government's ten point plan. The document has been criticised for restating inaccurate and inflammatory statements about land open to claim, impacts on mining and resources industry, and funds spent on social services for Indigenous peoples. *(Age, 12 Jan, pA3)**

The government also released 'Native Title: On the Record, the rhetoric and the reality'. The document contains quotes from the debates of 1993, which it is argued support the

government position on the Amendment Bill. Launching the document, Acting Prime Minister, Mr Tim Fischer, was particularly critical of Noel Pearson. (*CT, 15 Jan, p3*) In response, the Opposition noted Mr Fischer's comments during the same period, which suggested that the status of pastoral leases was not certain. (*Age, 15 Jan, pA8*)

Acting Prime Minister, Mr Tim Fischer has stated that the government's efforts toward reconciliation would begin again if the Amendment Bill were to pass the senate. (*SMH, 15 Jan, p5*)*

The Labor Party National Conference passed a motion put by the Leader of the Opposition which resolved to oppose the Government's Bill when reintroduced to the Senate. The Leader, Mr Kim Beazley, said that the first act of a Labor government if elected would be to bring all the interested parties together for roundtable talks until a resolution was reached. (*Aus, 22 Jan, pH4*)*

In a concession to the concerns of state Labor leaders and the mining industry the National Conference agreed to amend their policy to support changes to the *Native Title Act* that would allow the automatic renewal of mining leases where there were no changes to the terms of the lease. (*WA, 22 Jan, p6*)*

GENERAL NATIVE TITLE ISSUES

Aboriginal leaders boycotted talks with the Prime Minister John Howard in protest at his handling of native title issues. (*Age, 13 Dec, p7*)*

The Canadian Supreme Court decision in *Delgamuukw v British Columbia*, 11 December 1997, overturned a lower court ruling to hold that the Gitksan and Wet'suwet'en Nations held Aboriginal title in their traditional land (58,000 sq. km). A new trial was also granted to determine issues of self-government rights because the judge had failed to give sufficient weight to the oral histories and evidence of the plaintiffs. Attention has focused on the fact that the court concluded that Aboriginal title encompasses rights to minerals. (*CM, 5 Jan, p4*)* Special Minister for State, Senator Nick Minchin also highlighted the mineral rights aspect of the decision and said that the preliminary assessment of the case was that it would have no ramifications for Australia. (*Ad, 9 Jan, p7*)*

Wayne Lonergan, of Coopers and Lybrand has produced a report examining the economic impact of native title on industry revenue. The report suggests that as much as \$30 billion of mining investment opportunities have been lost. Lonergan has suggested that even if the Amendment Bill were passed, \$20 billion would still be lost. An Access Economics study also seeks to evaluate projects subject to native title. (*Aus, 7 Jan, p5*)* It has been pointed out many of these projects are not delayed while other have been delayed by commodity prices and other market influences, not native title. (*SH, 11 Jan, p61*)* Figures also suggest that despite the claims in these reports, new mining developments in Australia in the last financial year showed an increase. (*Age, 23 Jan, p. A6*)*

Aboriginal and Torres Strait Islander Social Justice Commissioner Michael Dodson ended his term on 17 January. In his final press conference Mr Dodson strongly criticised the

governments treatment of Indigenous peoples' perspectives in the native title debate. Mr Dodson will not be replaced and the position of Aboriginal and Torres Strait Islander Social Justice Commissioner has been placed within the responsibilities of the Race Discrimination Commissioner. (*HS, 17 Jan, p30*)*

Queensland Premier, Mr Rob Borbidge, again raised fears that freehold title would be subject to native title applications. These comments were made in the context of speculations about freehold tenures transferred between government authorities and about mining homestead special leases. (*Aus, 21 Jan, p5*)

Northern Territory

The Northern Land Council has announced plans for legal action on an \$18 million development near the new East Arm Port. Deputy Chief Minister, Mike Reed stated native title was extinguished, as the land was private freehold before the government resumed it. (*Media Release, 17 Dec*)

Galarrwuy Yunupingu has criticised comments by the federal government that native title issues are threatening the Darwin-Alice Springs railway project. Mr Yunupingu stated that the Northern and Central Land Councils have had discussions with the Northern Territory government and has indicated its willingness to assist in realising the project. (*Aus, 19 Jan, p11*) The Northern Territory government lodged a notice of intention to compulsorily acquire lands required for the Darwin-Alice Springs railway. Native title holders had approximately 1 month to register their interest in the land. If the application were then accepted, the native title holders would be paid compensation. (*NTN, 19 Jan, p4*) A 40-km wide strip of land on the outskirts of Darwin, which is now subject to a native title application, covers every approach to the city for the Darwin-Alice Springs rail project. (*Ad, 28 Jan, p25*)

Queensland

The Queensland Government has refused to give approval to the Cape York Peninsula Land Use Agreement. (*CM, 15 Jan, p2*)*

The Queensland Government (Department of Premier and Cabinet) has distributed a 20 page booklet to 1000 Queensland leaseholders explaining the Federal Government's ten point plan, following the release of a similar booklet by the Federal government. (*CM, 16 Jan, p7*)

Senator John Woodley, Democrat spokesperson on Aboriginal and Torres Strait Islander Affairs, alleged the Queensland Premier, Mr Rob Borbidge, had breached the *Racial Hatred Act* when claiming that Housing Commission homes were subject to native title claims. However the Premier stood by his claim and further stated that 50.8 percent of Queensland was under native title claim. (*CM, 30 Jan, p4*)*

Western Australia

West Australian MP, Wilson Tuckey, said that National Native Title Tribunal had recently accepted native title claims over freehold residential blocks in Exmouth and Bremer Bay and the owners were being forced to go through native title mediation. (*CM, 4 Dec, p6*)

The WA Government has offered land to Aboriginal native title applicants in Kalgoorlie-Boulder in exchange for permission to develop 1500 housing lots in the town. (WA, 5 Dec, p4)

Carnarvon's Ingarda people and several other Aboriginal groups claiming native title over the Carnarvon area, have signed a historic agreement with the local shire and State Government, for residential expansion of the town between the Gascoyne river and the town center. Gnulli Committee chairman, Ron Crowe, representing the Aboriginal groups said that the agreement highlights the workability of the 'right to negotiate' process under the *Native Title Act*. (ST, 14 Dec, p48)*

The Nyoongar Circle of Elders have said that they will make an application for all non-residential land in the East Perth area after plans for a Reconciliation at Gloucester Park were rejected. (WA, 7 Jan, p8)

Proposals to create Aboriginal shires in the East Pilbara and North of Broome have been criticised by shire officers concerned about their viability and about duplication. East Pilbara community liaison officer Teddy Biljabu, suggested that rich mineral deposits on native title land would make communities reasonably self-sustaining. (WA, 29 Jan, p39)

South Australia

The Kokatha, Barnjarla and Kujani people have asked for jobs and other involvement in the \$2.5 billion Kistler Aerospace Corporation's rocket launching program at Woomera, due to start next year. The State and Federal Governments said the rocket program would not start until Aboriginal, safety and environmental issues were settled. (Ad, 2 Dec, p4)

Phillip Lawson, of the Barkandji people, has lodged a claim against South Australian Water, to avert plans to re-submerge the 10,000 grave burial site at Lake Victoria. South Australian Water argue that while they do not contest the native title claim, they are concerned about waiting for that process to take its course. (Ad, 5 Jan, p10)*

Victoria

Cobungra Station, one of Victoria's most historic grazing properties, has been sold for \$4.1 million, despite being subject to a native title claim. (Age, 3 Dec, pA2)

Tasmania

The Tasmanian Aboriginal Land Council has warned of a legal battle over the Government's plans to sell Crown land shack sites. (HM, 12 Dec, p2)*

KUMARANGK/ HINDMARSH ISLAND BRIDGE CASE

The New South Wales Government intends to intervene in support of the appellants in the Kumarangk/Hindmarsh Island Bridge case. The NSW Solicitor General will support Counsel for the Ngarrandjeri women who will argue that the law removing their right to seek heritage protection is unconstitutional. The Queensland and South Australian Governments will support the Federal Government in arguing that s.51 (26) of the Constitution allows the Government to make special laws for a particular race, not only for their benefit but to their detriment. (SMH, 28 Jan, p4)

(Editors note: The Kumarangk/Hindmarsh Island Bridge case will be significant in determining issues that are also relevant to any constitutional challenge to the Federal government's Native Title Act Amendment Bill).

PUBLICATIONS

Native Title Research Unit Publications

The following NTRU publications are available from the AIATSIS Publications Sales Assistant (Tel: 06 246 1191)

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 (special discount) \$5 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 - cost \$11.85 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)

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)

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)

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. (\$12.95 including postage)

The following publications are available from the Native Title Research Unit, AIATSIS, Tel (02) 6246 1158, Fax (02) 6249 1046 (issued free of charge):

Issues Papers published in 1997 and 1998:

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 Lavarch and Allison Riding

Regional Agreements Papers:

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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This newsletter was prepared by Lisa Strelein, Chitra Majumdar and Penelope Moore