



AIATSIS

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NATIVE TITLE NEWSLETTER

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NATIVE TITLE IN THE NEWS December 1998 and January 1999

(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
FinR = Financial Review
HS = Herald Sun (VIC)
IM = Illawarra Mercury
LE = Launceston Examiner

Mer = Hobart Mercury
NNTT = National Native Title Tribunal
NTA = *Native Title Act 1993*
NTN = Northern Territory News
QNT = Queensland Native Title News
SC = Sunshine Coast Daily
SMH = Sydney Morning Herald
Tel M = Telegraph Mirror (NSW)
WA = West Australian
WAus = Weekend Australian

News from the Native Title Research Unit

Launch of Native Title Guide

The Council of the Australian Institute of Aboriginal and Torres Strait Islander Studies will be hosting the launch of our latest publication *A Guide to Overseas Precedents of Relevance to Native Title*. The Guide was prepared for the NTRU by Shaunnagh Dorsett and Lee Godden who summarised it in this way:

In an era of increasing complexity of native title issues, this Guide provides a comprehensive and easily understandable analysis of common law precedent from Canada, the United States and New Zealand, as well as of the context in which these decisions were made. As is evident from recent native title decisions, Australian courts continue to look to their overseas counterparts for guidance with respect to new native title issues. The Guide covers a number of general areas, such as recognition and extinguishment of native title, as well as examining more

specific topics such as the offshore, evolution of rights and compensation. In each section a breakdown of the case law is provided, as well as commentary as to its possible application in Australia. This Guide is designed for use by both non-legal and legal audiences.

Mr Geoff Clark, ATSIC Commissioner responsible for native title, will launch the Guide at AIATSIS, 3.30pm, Thursday 11 February.

CLAIMS

New South Wales

North-West Sydney

A native title application covering the Darling Mills State Forest and Excelsior Reserve in north-west Sydney, has been withdrawn. The application was lodged with the NNTT in 1995. In an agreement between the local council and Indigenous people, the parkland will be renamed Bidjigal Reserve and the Aboriginal people will have a say in how the reserve is managed. (*DT, 19 Dec, p3*)

Victoria

Dja Dja Wurung People

The first native title application in Australia to be subjected to rigorous checks under new Federal native title laws has been unsuccessful in gaining negotiating rights over developments. The application, lodged on behalf of the Dja Dja Wurung people on 29 October 1998, asserted native title rights and interests in three parcels of land and waters totaling 63 hectares near Dunolly, Bealiba and Rushworth, Victoria.

Tribunal Registrar Chris Doepel said under new laws, which took effect on September 30, all new and most existing native title applications throughout Australia were required to be assessed against detailed criteria, known as the registration test. Mr Doepel said applicants had to satisfy several important conditions to attract the right to negotiate and other procedural rights. Conditions included:

- clearly identifying the extent of the claim group;
- demonstrating that the application was lodged with the authority of the group or clan from whom the native title rights were derived; and
- showing evidence of continuous association with the land.

Mr Doepel said in this particular case, on the basis of the information provided, the application has not met the criteria in full. Detailed reasons will be provided to the applicant shortly.

The applicants are entitled to appeal the decision and will still be able to pursue their application - either through mediation or litigation - towards a formal recognition of native title. If they are ultimately successful in being recognised as the native title holders, then they would win the right to negotiate and may be able to pursue compensation if they can demonstrate that earlier developments impacted adversely on their rights and interests.

Mr Doepel said the application of the registration test was accelerated by the Victorian Government's notice of intention to grant mineral tenements to Mining Trust and Talager Pty Ltd in central Victoria. (*NNTT Media Release, 7 Dec*)*

Yorta Yorta People [NNTT Ref#VC94/1]

A decision has been handed down regarding the Yorta Yorta people's native title claim. Federal Court Justice Howard Olney rejected the claim announcing: 'the court determines native title does not exist in relation to the areas of land and water identified in this application'. He then left the court. (*Mer, 19 Dec, p25*)*

The Yorta Yorta claim for native title rights, including use, occupation, habitation and possession of Crown land, covers more than 113 000 hectares of land and water in the vicinity of the Owens, Goulburn, and Murray Rivers in Victoria and NSW. It was referred to the Federal Court by the National Native Title Tribunal on 25 May 1995 as mediation was unsuccessful.

Justice Olney began hearing the claim on 8 October 1996. There were over 100 days of hearing before the Court, over a period of two years.

More than 500 respondents opposed the claim. They included the governments of Victoria, New South Wales and South Australia, the Murray Darling Basin Commission, local government authorities and timber, grazing and farming interests.

In his 75-page decision, Justice Olney has found that native title did not exist in relation to the claimed area as the applicants failed to establish continuous links with the land and the laws and customs of the inhabitants of the area back to the time of the earliest contact with Europeans. (*Attorney-General, Media Release, 18 Dec*), (*SMH, 19 Dec, p1*), (*FinR, 19 Dec, p4*)*

The solicitor representing the Yorta Yorta, Mr Peter Seidel, said Justice Olney's judgement presented frozen views about Aboriginality as his decision said that the Yorta Yorta people's connection with the claimed land and water was lost around 1880. Justice Olney's judgement said that the 'tide of history' had washed away any traditional rights the Yorta Yorta may once have exercised in regard to the land. (*SMH, 19 Dec, p1*)*

Lawyers representing the Yorta Yorta people have begun to look at grounds for appeal. (*Age, 19 Dec, p8*)*

Victorian Premier, Mr Jeff Kennett, offered to meet with representatives of the Yorta Yorta people to bring about reconciliation. Mr Seidel said the Yorta Yorta would wish to deal with the Government on a mature basis. (*Age, 19 Dec, p8*)

The Yorta Yorta people have lodged an appeal against Justice Olney's decision in their case for recognition of their native title rights and interests. In the appeal documents the Yorta Yorta said Justice Olney erred in law in applying an incorrect test for deciding whether or not native title exists and in determining native title. Justice Olney required that it be established that they, and each generation of their ancestors since 1788, had acknowledged and observed the same traditional laws and customs, and occupied the land and waters in the same manner, as their ancestors had in 1788. The Yorta Yorta say the Judge erred in not recognising traditional laws and customs, the rights and interests possessed under those laws and customs and the connection of the applicants to the land and waters by those laws and customs. The documents site 11 errors in law. The Yorta Yorta also say Justice Olney erred in the evaluation of oral testimony of the appellants in ruling that such testimony should be given less weight than the writings of Edward Curr – a 19th Century squatter. The appeal documents

asked the court to allow the appeal and set aside Justice Olney's determination, or failing that, for the determination to be varied or for the matter to be sent to a single judge to be further heard. (*Native Title email list, 28 Jan*), (*Age, 29 Jan, pA6*)*

Queensland

Kombumerri People [NNTT Ref#QC96/69]

Negotiations over a redevelopment of Jack Evans Boat Harbour, Tweed Heads, are progressing positively. The negotiations are between local Aboriginal people and the Tweed Shire Council. The Kombumerri people lodged an application for recognition of their native title in June 1996. (*Daily News Tweed Heads, 27 Nov*)

Kombumerri People [NNTT Ref#QC98/24]

The Kombumerri people's native title claim over areas of the Gold Coast has been referred to the National Native Title Tribunal after Kombumerri representative, David Dillon, told the Federal Court that negotiations with other stakeholders were proceeding well. The Kombumerri are seeking recognition of their native title so that they can have a say in how the land is used and preserved. (*Gold Coast Bulletin, 3 Dec, p8*)

Turrbal People [NNTT Ref#QC98/26] and Jinibara People [NNTT Ref#QC98/45]

The Federal Court has given the Turrbal and Jinibara native title applicants until March to sort out their disputed boundaries so that their applications can proceed. NNTT President, Justice Robert French, said the directives indicate the much more active role the Federal Court will have in native title mediation following the amendments to the NTA. (*CM, 4 Dec, p3*)

Torres Strait Regional Authority

Traditional owners of Yorke and Stephen Island communities have asked the Torres Strait Regional Authority to represent them in their native title claims. TSRA Chairperson, Mr John Abednego, said the Authority is formally representing native title applications relating to Saibai, Boigu, Dauan, Mabuiag, Badu, Warraber, Coconut, Waier and Dowar, and Yorke and Stephen. The TSRA is also assisting on the Mualgal and Kaurareg applications. (*Torres News, 11 Dec, p9*)

Kalkadoon People

The Kalkadoon people have reached an agreement to replace eight Kalkadoon native title claims in north-west Queensland with a single united claim.

The breakthrough agreement was reached last Sunday at a meeting of the Kalkadoon Steering Committee in Mt Isa. The meeting agreed unanimously on a process to amalgamate all existing native title applications by Kalkadoon people.

The Kalkadoon Steering Committee was formed in July 1998 at a summit of all Kalkadoon native title applicants convened by the National Native Title Tribunal. The Committee has since met every month to discuss a coordinated approach to native title applications in the region. Discussions have been facilitated by the Tribunal.

Tribunal President, Justice Robert French, said the agreement was a significant step towards the resolution of native title issues in the region. (*NNTT Media Release, 16 Dec*)*

Gungarri People [NNTT Ref#QC96/1]

The Gungarri people have presented officers of the Queensland Government with a 'connection report' to support their native title application. The report describes the history of the Gungarri people and their links to the land in south-west Queensland.

The report was presented in a ceremony at the site of the 1996 protest camp near Mitchell. The site was on part of the route of the gas pipeline where the Gungarri first asserted they have native title rights and interests. The NNTT has also been given a copy of the report.

The Gungarri application was lodged with the NNTT in March 1996, and is currently in mediation. It includes parcels of crown land between Mitchell in the east, Charleville in the west and St George in the south.

Tribunal member Mr Graeme Neate - mediator for the Gungarri application - said the completion of the connection report is an important step towards resolution of the Gungarri people's native title application. Mr Neate said the report provides information from the Gungarri people, proving their links to the land. The information can also help other parties assess the strength of the claim.

At a mediation conference in Mitchell last February, the Gungarri application was substantially amended to exclude areas subject to conflicting native title claims by other Aboriginal groups and land with tenures which the Queensland Government believed had extinguished native title, such as grazing homestead perpetual leases. The Tribunal estimates changes to the claim area have reduced the number of people affected from approximately 750 to approximately 90. (*NNTT Media Release, 16 Dec*)*

Darumbal People #2 [NNTT Ref#QC99/1]

A second Darumbal people's claim has been lodged in the Federal Court in response to a Section 29 notice. It covers parcels of land north-west of Rockhampton in Central Queensland. (*QNT, Jan, p1*)

Powder Family [NNTT Ref#QC99/2]

The Powder family's claim has been lodged in the Federal Court in response to a Section 29 notice. It covers lots near Marlborough in Central Queensland. (*QNT, Jan, p1*)

Iman People #3 [NNTT Ref#QC99/3]

The Imam people's claim has been lodged in the Federal Court in response to a Section 29 notice. It covers specific lots south-east of Miles in Central Queensland. (*QNT, Jan, p1*)

Wakka Wakka People [NNTT Ref#QC99/4]

The Western Wakka Wakka people's claim has been lodged in the Federal Court in response to a Section 29 notice. The claim covers an area of land near Yuleba in Central Queensland. (*QNT, 4 Feb, p1*)

Barungarn People [NNTT Ref#QC99/5]

The Barungarn people's claim has been lodged in the Federal Court in response to a Section 29 notice. The claim covers an area of land near Yuleba in Central Queensland. (*QNT, 4 Feb, p1*)

Ilfracombe Shire Council

A non-claimant application has been lodged in the Federal Court by the Ilfracombe Shire Council. The claim covers specific lots at Ilfracombe in Central Queensland. (*QNT, 4 Feb, p1*)

Western Australia

Perth Region

Eight south-west and Great Southern native title applications stretching from the Perth metropolitan area to Esperance have been discontinued.

Announcing the development today, National Native Title Tribunal spokesman Hugh Chevis said notices were filed in the Federal Court after concerted work by the Noongar Land Council and individual applicants to rationalise applications in the southern part of the State. The discontinued applications were Wheelmin; Colbung; Samuel Miller; Kevin Miller; Kaniyang; Corbett; Peel; and Abraham/Kickett.

Mr Chevis said many applicants are deciding that it is in their best interests to combine efforts on particular applications to meet the requirements of the new registration test under the amended *Native Title Act 1993*. (*NNTT Media Release, 12 Jan*)*

Goldfields

Indigenous people in the Goldfields have taken new steps to combine efforts on a series of native title applications in the north-west and southern Goldfields.

Documents filed in the Federal Court yesterday saw the amalgamation of two Ngadju applications south of Kalgoorlie and a decision to unite six applications by the Koara people in the north-west Goldfields.

Commenting on the moves today, National Native Title Tribunal spokesman Hugh Chevis, said it was part of a trend toward the reduction of overlapping and rival native title applications in the region.

In the Goldfields, 69 native title applications are expected to face the registration test over the next several months (*NNTT Media Release, 12 Jan*)

North-East Goldfields

Twenty native title applications in the north-east Goldfields have united to form a single native title application known as the Wongatha claim.

The Federal Court have agreed to the amalgamation of the applications, which amount to 28% of all Goldfields applications.

National Native Title Tribunal Registrar Chris Doepel said the decision represented a major step forward in the reduction of overlapping and rival native title applications in the region. Mr Doepel credited work by the Goldfields Land Council and individual applicants. (*NNTT Media Release, 22 Jan*)*

Northern Territory

Fejo and Mills on behalf of the Larrakia people v The Northern Territory and Oilnet (NT)

High Court of Australia (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ). 10 September 1998

In December 1997, the Larrakia people sought a declaration in the Federal Court that native title exists in relation to particular lands and that the Larrakia people are the native title holders in respect of those lands. This was in response to the granting of Crown leases, with an option to acquire freehold, over lands within the area subject to an application for a determination of native title. The area in dispute was once granted in fee simple, but later reverted to vacant Crown land. The Larrakia argued that the Northern Territory government was required by the *Native Title Act 1993* (Cth) to either negotiate with the Larrakia or to compulsorily acquire their native title.

The High Court was asked to consider whether a grant of freehold or fee simple was effective to extinguish all native title rights and interests so that, upon the land being re-acquired by the Crown, no native title rights and interests could then be recognised by the common law.

The case raises two important issues. The first issue is whether a grant of freehold extinguished native title so that no form of native title can co-exist with freehold title. The second question is whether extinguishment was permanent and absolute or whether there was potential for native title under the common law to be re-recognised or to 'revive' when the land returned to the Crown. The case also dealt with the issue of injunctive relief available outside the operation of the *Native Title Act 1993*.

Held

1. Native title is completely extinguished by the grant of a freehold estate. The rights granted under fee simple are inconsistent with the continued existence of any form of native title and no coexisting or concurrent rights can survive.
2. The grant of freehold extinguishes native title permanently regardless of the land being held by the Crown in the future.
3. While the existence of Indigenous law is necessary to establish native title, it is not sufficient to invite recognition under the common law.
4. Statutory rights under the *Native Title Act* are valuable rights that may warrant protection by injunctions. General principles of injunctive relief apply. Acceptance by the Registrar establishes an arguable case, but some inquiry may be made into the case of the other parties.

.....Lisa Strelein, Visiting Research Fellow NTRU, 4/2/99

MINING AND NATURAL RESOURCES

Queensland

Charters Towers – Burdekin River

The Charters Towers Fish Stock Group has received permission to release barramundi fingerlings into the Burdekin River. The Group, in line with new Queensland native title laws, advertised their re-stocking plans and allowed for a 28-day period to give Aboriginal groups the opportunity to object. There were no objections to the plan. (*Northern Miner*, 12 Jan, p2)

South Australia

Gawler Craton

Drilling will begin in nine copper-gold targets in a Gawler Craton joint venture between Adelaide Resources and Cyprus Amax. Native title and environmental approvals have been gained for the program. (*Ad*, 29 Jan, p27)

Western Australia

The National Native Title Tribunal has ruled that it cannot hear the case for the grant of 15 mining leases in the Goldfields and Great Southern regions because the Western Australian Government had not negotiated with native title applicants. The 15 applications asking for the

Tribunal to decide the matters were lodged by the Aboriginal Legal Service and the Noongar Land Council on behalf of several groups of native title applicants.

In a significant decision, Tribunal Member Chris Sumner ruled that a period of good faith negotiations between the Indigenous people, the Government and other parties was necessary before the Tribunal could be called in to decide if the leases could be granted - regardless of which party sought the Tribunal's intervention.

The ruling had implications for more than 2000 recent applications by Indigenous people for the Tribunal to decide whether a series of land acquisitions, mining leases and exploration licences should be granted and if so under what conditions. The applications - mainly in the Goldfields - were lodged in the days leading up to the introduction of amended native title laws on 30 September 1998. Many of these applications will now be dismissed. (*NNTT Media Release, 21 Dec*)*

AGREEMENTS

National

Indigenous Land Use Agreements Conference

At a conference on Indigenous land use agreements in Kalgoorlie today, NNTT President, Justice Robert French, urged Australian mining companies, governments, pastoralists and other land users to take advantage of new measures to fast track developments in areas under native title claim.

Justice French said the amended *Native Title Act 1993* provided new legislative tools for Governments and developers to strike legally binding and enforceable land use agreements with Indigenous people which could allow developments to proceed while protecting the interests of native title holders. He said Indigenous land use agreements offer the opportunity for economic certainty and cultural protection at the local or regional level and allow developments to proceed by negotiation without waiting for the finalisation of native title applications.

Indigenous land use agreements can cover:

- ancillary agreements that may resolve specific issues arising from mediation of a native title claim;
- negotiated settlement of all issues relating to a native title claim;
- agreements for mineral exploration, mining, land developments and some types of compulsory acquisition by governments; and
- co-management or partnership arrangements.

More than 120 people representing the mining and pastoral industries, local governments and native title holders attended the conference, staged by the National Native Title Tribunal with support and assistance from the WA Chamber of Minerals and Energy, Association of Mining and Exploration Companies and the Australian Mining and Petroleum Law Association. (*NNTT Media Release, 1 Dec*)*

Western Australia

Wunambal-Gaambera People

An agreement between the Wunambal-Gaambera people and a pearling company has been signed in the Kimberley area of Western Australia. Information about agreement details has not yet been released to the media as there are fears that this could jeopardise State Government approval of the agreement. (*WA, 7 Dec, p9*) The agreement allows for company access to the waters and recognises the native title interests of traditional owners. (*Aus, 7 Dec, p5*)

Northern Territory

Normandy Mining has signed four agreements with Indigenous groups to secure exploration licences in the Tennant Creek gold mining region. The agreements were made with the Warumungu, Warlmanpa and Walpiri communities and the Central Land Council after Federal Government approval. The agreements provide compensation, employment, training and site protection for Indigenous parties and sets up liaison groups for input into the exploration process. Under the agreements, the company has exclusive exploration rights for gold and base metals in the area. (*Aus, 10 Dec, p27*)

AMENDMENTS

National

Revised guidelines for legal aid for respondents under the NTA, as amended, commenced on 10 November. Under the guidelines persons responding to native title claims will be eligible for the same financial assistance as claimants.

The main features of the revised guidelines are as follows:

- assistance is available to anyone who is, or intends to become, involved in an inquiry, mediation or proceeding related to native title;
- assistance is available to people negotiating Indigenous land use agreements;
- incorporated and unincorporated bodies (including local government) and groups of persons with similar interests in a matter are eligible for assistance;
- respondents can be represented by a peak body such as a peak farming or graziers association;
- assistance up to 100 per cent of Federal Court costs is available; and
- the requirement for a financial contribution from assisted parties has been removed.

A central feature of the guidelines is that of group applications. This is based on the observation that it is much more efficient to have each separate interest represented as a group rather than having many respondents. (*Attorney-General, Media Release, 30 Nov*)

Western Australia

The last of the State Government's native title Bills has passed through the Legislative Assembly. The Bill, which proposes to establish a State native title commission, is now in the Legislative Council. (*WA, 2 Dec, p6*) After pressure from other parties, the State Government has decided to refer its proposed native title legislation to a select committee for consideration. The committee must examine the three Bills in a short timeframe, reporting by 10 December. (*WA, 2 Dec, p6*)*

The State Opposition has taken the Western Australian Government to task over the leaking of documents to the mining industry. The documents originated from the Crown Solicitor's Office and contained legal opinion on the Miriuwung-Gajerrong native title decision. They were distributed at a Government briefing to members of the Chamber of Minerals and Energy, the Association of Mining and Exploration Companies, the Pastoralists and Graziers Association, the Forest Industries Federation and law firm Freehill Hollingdale and Page. The Government has refused to table the documents in Parliament. *(WA, 3 Dec, p10)**

The seven-member Parliamentary Committee set up to examine the Western Australian Government's native title Bills has handed down a majority report accompanied by three minority reports. The majority report contained only one recommendation – that other MPs read the report. Minority reports were written by:

- Liberals Greg Smith, Barry House and Murray Nixon, who called for the Bills to be passed urgently;
- Greens MLC Giz Watson and Democrat MLC Helen Hodgson, who called for the Validation Bill to be rejected and for maintenance of the right to negotiate; and
- Labor MLC Tom Stephens. *(WA, 11 Dec, p6)*

The State Opposition has proposed amendments to the native title Bills before the Legislative Council. Their amendments would upgrade the proposed Aboriginal consultation rights over pastoral leasehold. *(WA, 17 Dec, p10)** The Opposition will also try to reduce the schedule in the Titles Validation Amendment Bill to conditional purchase, perpetual and residential leases. Opposition Aboriginal Affairs spokesperson, Tom Stephens, said that the Federal Court's Miriuwung-Gajerrong decision showed that native title had survived many of the tenures that the Government had listed on their schedule. *(WA, 18 Dec, p8)*

Opposition amendments to the Western Australian Government's Native Title (State Provisions) Bill have been passed by the Legislative Council. The amendments will allow native title applicants stronger rights over land affected by historical leases. Under the Government's original Bill, Indigenous people would only have had a right to be consulted over activities on historical leases. *(WA, 23 Dec, p4)*

Opposition amendments to the Government's Titles Validation Amendment Bill have been passed by the Legislative Council. The amendments were proposed by Labor and supported by the Australian Democrats and the Greens. The amendments changed the Government's proposal to extinguish native title on 500 different types of leases. Opposition leader, Geoff Gallop, said the amendments would still extinguish native title on residential or commercial leases and on exclusive possession leases. The Government is unwilling to accept the changes to its proposed legislation. *(WA, 23 Dec, p4)*

Premier Richard Court has described the amendments to the Bill to set up a State-based native title commission as 'totally unworkable'. Rather than accept amendments, which would bolster Aboriginal rights to negotiate, the Premier said he would discard the Bill and commit to operating under the National Native Title Tribunal. *(Aus, 24 Dec, p4)**

Premier Richard Court has rethought his stance on his Government's native title legislation. He will now attempt to reach an agreement with the Labor Party in order to pass legislation to establish a State-based native title commission. Mr Court did, however, reiterate that the Government did not intend to shift its position in regard to the legislation. *(WA, 14 Jan, p32)**

GENERAL NATIVE TITLE ISSUES

International

The Commonwealth Government has confirmed in Parliament that it wishes to change references to 'self-determination' for Indigenous peoples in the United Nations Draft Declaration on Indigenous Rights. Senator Hill stated that the Government believes that alternative language, such as self-management or self-empowerment would better reflect Australia's national interests and circumstance. (*Democrats Media Release, 1 Dec*)* The use of the term 'self-determination' will be discussed by governmental and Indigenous representatives when the United Nations Working Group on the Draft Declaration meets in Geneva. (*Age, 7 Dec, pA4*)*

Aboriginal leader, Mr Peter Yu, has told the Amnesty International Human Rights Defenders conference that Indigenous culture in Australia is being eroded by the Federal Government. The conference, held in Paris, is part of the marking of the 50th anniversary of the Universal Declaration of Human Rights. (*WA, 10 Dec, p8*)

The Federal Government has lodged a report with the United Nations committee investigating into racial discrimination. The Committee on the Elimination of Racial Discrimination has asked Australia to explain their handling of human rights. Of particular concern to the committee were recent amendments to the *Native Title Act 1993*, changes to land rights policy and the vacating of the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. The report defends the Government's position on native title, arguing that the amendments strengthen a non-discriminatory regime. Its says that the restructuring of the Social Justice Commissioner's position was a streamlining of specialist commissioners and would not effect the rights of Indigenous people. The Government has refused to release the report to the public. Australian officials will appear before the committee in March. (*Age 21 Jan, pA2*), (*SMH, 21 Jan, p2*)*

The Government has decided to make its response to the Committee publicly available. It can be found at: <http://www.law.gov.au/publications/pubs.htm> (*Attorney-General Media Release, 28 Jan*)

Shadow Attorney-General, Robert McClelland, has said that although the UN Committee sought the Government's views on whether its changes to the NTA were consistent with the *Convention on the Elimination of All Forms of Racial Discrimination*, the Government's response describes those changes without addressing the issue of whether the amendments discriminate on the basis of race. The Government has not released its legal advice as to whether its amendments are racially discriminatory or not. The Government's submission does not make mention of the recent Miriuwung-Gajerrong native title decision, which has shown that the confirmation of extinguishment provisions in Schedule 3 of the Bill, at least as they relate to Western Australia and the Northern Territory, are inconsistent with the common law. (*Shadow Attorney-General, Media Release, 29 Jan*)

National

Acting Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner, Ms Zita Antonios, said that the Federal Court's Miriuwung-Gajerrong native title decision shows that it is much better to approach issues of native title through negotiation, mediation and agreement is than through litigation. She said that

legislation and court proceedings have made native title issues more complex than they need be. (WA, 1 Dec, p6)

ATSIC has released a paper for information and discussion on the new provisions relating to Native Title Representative Bodies under the NTA, as amended. (*Gundagai Independent*, 7 Dec, p2)* The paper forms the basis of a consultation process undertaken by ATSIC on matters related to the implementation of the new Representative Body provisions. In particular, the paper highlights a number of issues about which the Minister for Aboriginal and Torres Strait Islander Affairs is required to make decisions as part of implementing the transitional provisions. These include:

- the "invitation areas" for which eligible bodies will be invited to apply, during the transition period, for recognition as Representative Bodies to operate under the new legislative regime;
- the method of inviting applications for recognition as a Representative Body; and
- the form in which bodies will need to apply for recognition as Representative Bodies.

Copies of the paper can be obtained from ATSIC State and Regional Offices, by phoning ATSIC's Central Office on (02) 6289 3531 or by accessing ATSIC's Homepage on the internet at http://www.atsic.gov.au/native/representative_bodies/contents.htm (ATSIC general email)

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund has elected Senator Jeannie Ferris as Chair and the Hon Warren Snowdon MP as Deputy Chair. (*Committee Media Release*, 9 Dec)

Law firm Dwyer Durack, has set up a specialised consultancy group, based in Perth, to deal with business ideas and legal issues for Indigenous people. The group includes lawyers, accountants, anthropologists, management consultants, economists and historians and is chaired by Dwyer Durack senior partner Carolyn Tan. (WA, 16 Dec, p49)*

Part-time member of the NNTT and Chair of the Queensland Aboriginal and Torres Strait Islander Land Tribunals, Graeme Neate, has been appointed as the next NNTT President. He will start his term, replacing Justice Robert French, on 1 March 1999. (*Gold Coast Bulletin*, 19 Dec, p13)

NNTT President, Justice Robert French, said all Australian governments have failed to educate the public about native title. He criticised those who cite lack of native title determinations as proof of the NNTT's unworkability, when the Tribunal had no power to recognise native title, and pointed to the work of the Tribunal to mediate agreements, saying that the success of this process depended on the goodwill of all parties to achieve positive outcomes. Justice French said that such criticisms reflect a disturbing lack of information, knowledge and understanding about the native title process and also about the roles of government and the courts. He believes that government responsibility to educate the community about the essential nature of native title, native title process and the functions of the NNTT, has not been discharged. He said this failure had prevented agreements being negotiated and finalised. (*Sunday Times*, 20 Dec, p21)*

Justice Robert French, whose term is ending as President of the NNTT, said Native Title Representative Bodies are often inexperienced and inefficient. He said Representative Bodies around Australia are having trouble doing their job as they have yet to be accepted by the

communities they are supposed to represent. Some land councils have responded by pointing to a lack of resources that made it hard for many Representative Bodies to meet their obligations under law. (WA, 22 Dec, p6)

Mining company Rio Tinto has funded a study to look at the industry's effect on Arnhem Land communities. The study is to be conducted by the University of Wollongong. The research will centre on the town of Ngukurr and will provide the community and the company with recommendations about the impact of potential mining in the area. Project director, John Bern, is Professor of Sociology at the University. Professor Bern said the study followed an agreement between the Ngukurr people and Rio Tinto in 1996, recognising the Ngukurr people as traditional owners. (Aus, 13 Jan, p23)* The Social Changes in South-East Arnhem Land study will be a continuation of a 30-year association with the Ngukurr community for Professor Bern. The team of researchers will compile social-demographic statistics and will build an educational, health, and employment profile of the town. (IM, 12 Jan, p7)

In a letter, published as a newspaper advertisement, 57 prominent Aboriginal people and groups called on the Australian Government to sign a treaty with Aboriginal and Torres Strait Islander peoples. They suggested that the Treaty be concluded by 26 January 2001 as a symbolic date for negotiated settlement. Terms of the Treaty could refer to matters such as the Charter of Indigenous Rights, Land Levies, Indigenous Laws, Co-sharing Territories and Government. Signatories also called on the British Government to guarantee their human rights by strongly advocating the Treaty. They called for a referendum of Indigenous peoples over issues of nationality, constitution or form of government. Such a referendum could be held concurrently with ATSIC regional council elections later this year. Those who signed the document include Parry Agius, Geoff Clark, Gatjil Djerrkura, Michael Mansell, George Mye and Terry O'Shane. (WA, 27 Jan, p6), (CT, 27 Jan, p2), (Aus, 26 Jan, p5)*

New South Wales

A decision in the Supreme Court has seen a native title test case for the Western Lands Leases remain unresolved. Justice David Levine decided that it would be more appropriate for the case to be heard before the Federal Court and the National Native Title Tribunal, as native title applications were already before those bodies. The New South Wales Farmers Association was hoping to have a determination that native title had been extinguished when the lease was granted.(CT, 21 Jan, p4)

Victoria

Genocide charges against the Premier, Mr Jeff Kennett, have been dismissed from the Melbourne Magistrates' Court. Chief Magistrate, Mr Michael Adams, QC, ruled that genocide was not recognised under Victorian law. (Age, 28 Jan, pA)*

Western Australia

Miriuwung-Gajerrong People

Deputy Prime Minister Tim Fischer said the recent Federal Court decision recognising the Miriuwung and Gajerrong peoples' native title is totally unworkable and would be appealed. (WA, 7 Dec, p9)* (Summaries of the decision appeared in the last issue of the Native Title Newsletter)

The Western Australian Government has indicated that it will appeal the Federal Court decision on the Miriuwung-Gajerrong native title application. One of the issues they believe needs clarification is ownership of resources. (FinR, 9 Dec, p4)* Legislative Council leader,

Norman Moore, said the Government would spend up to \$2 million on the appeal. (WA, 10 Dec, p6)

The State Government will appeal the Federal Court Miriuwung-Gajerrong decision on 92 grounds. They lodged their appeal with the Federal Court on 15 December, claiming that Federal Court Justice Malcolm Lee erred when he judged that native title was a direct interest in land rather than particular rights in respect of the land. They are also concerned that the judgement included no concept of partial extinguishment. The Government wishes to challenge the ruling that because a lease interest was not permanent, native title was not extinguished. The Government will query the decision on the ownership of minerals. (WA, 19 Dec, p48)*

The Western Australian Government and the Northern Territory Government would like their appeal against the Miriuwung and Gajerrong Federal Court decision to be heard in the High Court rather than the Federal Court. The Governments will know in March whether parts of their appeal will go to the High Court. (WA, 14 Jan, p8)*

Noongar Land Council

A meeting of around 90 members of the Noongar Land Council has voted to transfer the handling of native title applications to the Aboriginal Legal Service. Members, who are unhappy with what the Land Council has achieved, also voted for a freezing of funds to the Land Council and dismissal of its executive committee. Less than 10 members signed a request for the meeting which, according to the Land Council's executive officer John Hoare, makes the meeting illegal under their constitution. (WA, 11 Jan, p24)* Mr John Herron, Commonwealth Minister for Aboriginal Affairs, has initiated inquiries into the operations of the Land Council. (WA, 16 Jan, p56)

Australian Capital Territory

The ACT Supreme Court has dismissed an application seeking the issue of warrants for the arrest of John Howard, Tim Fischer, Brian Harradine and Pauline Hanson. Four Aboriginal applicants were seeking to have the warrants issued on the basis that the amendments to the *Native Title Act 1993* had amounted to genocide. Justice Ken Crispin said that, under Australian law, there was no such offence as genocide. (CT, 19 Dec, p5)

An appeal against Justice Crispin's decision has been lodged in the Federal Court. (CT, 26 Jan, p2)* In a media statement at the time the appeal was lodged, the applicants state that:

It is our opinion that the judge failed to take into account the commitment Australia gave to the international community when ratifying the Genocide Convention in 1949. Australia was the third country to sign and gave an unequivocal guarantee that genocide is punishable under the existing laws of Australia and that, subject to international actions, Australia found there was no need to enact genocide legislation within the country.

The appeal also focuses on the ability of the court in Australia to prosecute their heads of State, under the Genocide Convention, making all Heads of State responsible for the actions. . . (as in the Pinochet matter) highlighting the fact that it is no function of a head of State or other high government official to commit acts of genocide. (Media Release, Aboriginal Tent Embassy, 25 Jan)

Northern Territory

The Northern Territory Government will join the Western Australian Government in an appeal against the recent Federal Court decision that recognised native title over the Keep River National Park. (*NTN*, 12 Dec, p4)* Chief Minister, Shane Stone, said the decision contradicted the Federal Government's plan for native title. (*CP*, 12 Dec, p28)

RECENT PUBLICATIONS (Not AIATSIS Publications)

Finlayson, Julie 1998 *Negotiating the Registration Test for native title claims: A manual for Anthropologists working with Native Title Representative Bodies*. ATSIC, Canberra.

ATSIC would welcome comments on the manual and will install a link on their website for the purpose. The link can be accessed through the manual's web-page at:

<http://www.atsic.gov.au/native/anthorego.htm>

Film/Video

Changes to Native Title Representative Bodies - ATSIC

ATSIC has released a video to provide information on the new legislative provisions for Native Title Representative Bodies contained in the *Native Title Act 1993*, as amended.

The video focuses on the processes for selecting and recognising representative bodies to operate under the amended Act. All existing representative bodies will be required to re-apply for recognition.

Further information about the video and issues discussed in the video is available by phoning ATSIC's Native Title Branch on (02) 6289 3308 or by emailing: representative.bodies@atsic.gov.au

Native Title Research Unit Publications

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

A Guide to Overseas Precedents of Relevance to Native Title Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden. AIATSIS, Canberra. (cost \$18.95 including postage)

Working with the Native Title Act: alternatives to the adversarial method. Edited by Lisa Strelein, 1998. (\$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 1997, 1998 and 1999:

- 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. (also Regional Agreements Issues Paper no. 1)
- 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
- No. 26: *Engineering Unworkability: The Western Australian State Government and the Right to Negotiate* by Anne De Soyza
- No. 27: *Extinguishment and the Nature of Native Title Fejo v Northern Territory* by Lisa Strelein

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
- No. 7: *Indigenous Land Use Agreements: New Opportunities and Challenges under the Amended Native Title Act* by Dianne Smith

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