



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

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NATIVE TITLE NEWSLETTER

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

Ad = Advertiser (SA)

Age = The Age

Aus = Australian

CM = Courier Mail (QLD)

CP = Cairns Post

CT = Canberra Times

Fin R = Financial Review

HS = Herald Sun (VIC)

KM = Kalgoorlie Miner

LE = Launceston Examiner

Mer = Hobart Mercury

NTN = Northern Territory News

SC = Sunshine Coast Sunday

SMH = Sydney Morning Herald

Tel M = Telegraph Mirror (NSW)

WA = West Australian

WAus = Weekend Australian

CLAIMS

ACT

Ngunnawal [NNTT Ref#AC96/2]

Chief Minister, Kate Carnell, said the government was keen to negotiate a settlement for a claim for 47,000ha in Namadgi National Park and some land in Tuggeranong Valley. The Namadgi land would remain as national park giving Ngunnawal people a shared management role. (*CT*, 3 June, p2) Chief Minister Kate Carnell said she hoped the claim would be settled by NAIDOC Week next year. (*CT*, 7 July, p1)

Ngunnawal [NNTT Ref#AC97/1]

A second claim over parts of the ACT was lodged, taking in the whole of the Namadgi and Tidbinbilla parks, extending the amount of the ACT under claim. The claim was lodged by Phillip Carroll on behalf of the Ngunnawal people and overlaps the previous Williams group claim. ACT government officials, have said that parts of the Murrumbidgee River Corridor and the Tuggeranong Homestead that are leased were thought to extinguish native title. (*CT, 26 July, p3*)*

Queensland

Ewamian People [NNTT Ref#QC97/18]

The North Queensland Land Council has lodged a claim over land including the Union Mining lease for the Georgetown gold mine, on behalf of the Ewamian people. Land Council executive officer, Kevin Busch, said the Ewamian people had retained links with the land and there was an Aboriginal reserve in the region. He said the closure of the mine was an economic decision and that the land claim application did not impinge on any stakeholders' existing rights. (*CM, 21 June, p71*)

Kalkadoon People #3 [NNTT Ref#QC97/20]

A claim has been lodged by members of the Kalkadoon people that covers parts of Mount Isa city and the shires of Ballia, Burke and Cloncurry. The claim covers all land, water and minerals and is not made with the assistance of the North Western Queensland Land Council in Mount Isa. Kalkadoon tribal council elder Alf Barton's claim has been lodged with the Native Title Tribunal but has not yet been accepted. (*NW Star, 14 July, p1*)

Western Australia

Wiljen

The WA Farmers' Federation may ask the Federal Court to dismiss the claim lodged for the Wiljen people for 138, 200 sq km in the south east of the state. Claimants have until 18 July to identify perpetual, conditional and pastoral leases to be excluded from the claim. (*WA, 10 June, p30*)

N/West Region - Fitzroy River & Geegully [NNTT Ref#WC97/46]

The Nyigina and Mangala peoples have launched a native title claim for around 120km of the lower and middle reaches of the Fitzroy River in the Kimberley. Kimberley Land Council executive director Peter Yu said that the claimants wish to preserve the river's cultural significance and improve its management. (*WA, 2 July, p28*)

Ord River Development Area - Miriuwung-Gajerrong #1 [NNTT Ref#WC94/2]

Federal Court Justice Malcolm Lee will go to the Kimberley to hear evidence from native title claimants from the Miriuwung-Gajerrong claim. The claim involves almost 200 individual parties - simplified to 13 groups by the Federal Court. The groups include the WA and NT governments, Shire of Wyndham, recreation users of Ord River, development farmers, mining companies, pastoral companies, Kununurra residents and organisations. This case could become a test case for native title rights over water. (*WA, 21 July, p6*)*

Ord River District Co-operative chairman, George Gardiner, is optimistic that native title claims in the area will be resolved. Mr Gardiner also does not believe that the native title claims pose a threat to the next stage of the Ord River irrigation scheme. (*WA, 21 July, p6*)

Northern Territory

In a letter to the editor, executive officer of the Dhimurru Land Management Aboriginal Corporation, Kelvin Leitch, says the Chief Minister's suggestions that new land claims would result in the public paying permit fees to use local beaches were 'spurious'. The township of Nhulunbuy and bauxite mine are located inside leases on Aboriginal land and a permit issued by the Corporation is required under the Aboriginal Lands Act (NT) 1980 for use of designated recreational areas. A 'user pays' system now operates which Mr Leitch says raised less than 12% of the annual staffing and operation costs of Dhimurru. Traditional owners have recently contributed 40% of annual operating costs from their own mining royalty receipts. (*NT News, June 24, p11*)

The Proposed Darwin to Alice Springs Railway

The NT government hopes to overturn a Central Land Council claim for land in Devil's Marbles National Park which is held in trust by the government's Conservation Land Corporation. Chief Minister, Shane Stone, said the claim would tie up development in the park and threaten security of tenure over the proposed Alice Springs to Darwin railway corridor. Mr Stone said a High Court ruling had already precluded land held by the land corporation from being claimed under the Aboriginal Land Rights (NT) Act. (*NT News, 23 June, p3*)

Northern Territory Chief Minister, Mr Shane Stone, called for the Commonwealth acquisition of the land and stated that claims by the two Land Councils in the NT are causing major problems. He said 'they are not insurmountable', although he confirmed that negotiations with the land councils had broken down. Chairman of the Northern Land Council, Mr Galarrwuy Yunupingu, accused the NT Government of trying to shift responsibility for railway corridor difficulties to land councils saying; 'the truth of the matter is that negotiations are continuing'. (*Ad, 23 July, p5*)

Western Australia

Gibson Desert [NNTT Ref#WC96/77]

A state government proposal to give Aboriginal people a large area over the Gibson desert has been withdrawn. 'Special freehold' and perpetual leasehold over 25 million hectares around Warburton, 1500 km NE of Perth was offered to the Ngaanyatjarra people in May 1996. The government is now offering only 4100 sq km around the Kiwirrkurra Aboriginal community on the NT border. This coincides with the Kiwirrkurra people's claim, one of 10 lodged with the NNTT in the initial 25 million hectare proposal. Daniel O'Dea, speaking for the claimants, said the government was concerned by a description of the original proposal as a 'state within a state'. (*CT, 3 June, p4*)

MINING AND NATURAL RESOURCES

Northern Territory

Energy Resources Australia and Jabiluka

ERA will return to the Federal Court where an attempt is being made to block the development of Jabiluka. Traditional owner, Ms Yvonne Margarula is seeking to prevent Federal Government approval for ERA to export uranium from the mine and claims that the

NT Government has issued the Jabiluka mineral lease illegally. ERA's chief executive, Mr Phillip Shirvington, said the company has legal advice that the lease is valid. ERA wants to modify the 1982 agreement that gives the company the right to develop Jabiluka, so that the ore can be processed at Ranger. To accomplish this a new agreement with the Aboriginal owners needs to be reached. Mr Shirvington said he hoped to have the agreement in place by next year. (*SMH 9 July, p33*)*

The High Court's Wik decision has raised question over the validity of 800 titles granted and 650 titles renewed since the Native Title Act became law on January 1 1994. Simon Jemison reports that this has 'forced the NT Department of Mines and Energy to stop issuing mining titles'. Despite this, he writes, the NT mining industry has never looked better. (*Fin R, 16 July, p41*)

Western Australia

Murrin Murrin

Anaconda Nickel Ltd's Murrin Murrin nickel project has received a \$96.4 million endorsement from Australian and offshore institutional investors. Constructions of the project were already under way after a lengthy native title negotiations with the Aboriginal groups in the area. (*CT, 24 July, p15*)

Queensland

Century Zinc Mine

CZL's native title agreement with Aboriginal communities of the Gulf region has made Indigenous employment opportunities a key focus for the company. Of the \$60 million compensation agreement, \$45 million is dedicated to creating job opportunities. Managing Director Ian Williams said 'our commitment is to work with the community to create opportunities to spend money on training'. Century Zinc is on track to begin construction of its Gulf of Carpentaria mine by October. (*Aus, 9 July, p22*)

Cape Flattery

Yesterday a decision by the Federal Court that allows miners to claim compensation payments to Aboriginal Communities as deductions, was welcomed by the mining industry. The decision will allow Cape Flattery to claim for more than \$1 million paid to the Hope Valley community under a 1992 agreement. Queensland Mining Council chief executive Michael Pinnock said that the ruling under the Minerals Resources Act could set a precedent for the Native Title Act, having an increased impact on future mining projects. (*CM, 11 July, p 6*)

New South Wales

The NSW Minister for Land and Water Conservation, Kim Yeadon, criticised the Queensland government's decision to proceed with the proposed St George dam before the completion of environmental and impact studies. The Narran Lakes area in northern NSW which would be flooded, is a wetland area and of Aboriginal cultural significance. (*CM, 12 June, p12*)

Commercial viability of the proposed BHP Westcoast Energy Eastern Gas Pipeline is still being assessed. The NNTT is involved in negotiation with the partners and a number of

claimants seeking \$2.7 million in compensation, protection of heritage sites and employment. (Aus, 16 June, p17)

Ross Mining expects to start construction of its Timbara gold project within a month and begin pouring gold from production in February next year. This follows a signing of a compensation agreement relating to a native title claim by the Tabulam Bundjalung. (Aus, 28 July, p72)* The NSW Aboriginal Land Council said the agreement would help the Bundjalung people by funding services, education, training, employment and community works. Environmentalists are opposing the mine. Council executive director, Mr Aden Ridgeway, said that the agreement should not be taken as a blanket endorsement of mining in Bundjalung country. (SMH, 26 July, 13)

South Australia

The South Australian Chamber of Mines and Energy identifies native title as 'the issue of greatest concern'. Some companies claim they have been delayed through uncertainty and have been forced to change exploration plans due to 'access problems', but rapport with Aboriginal communities is growing. Mr Bob Goreing of the SA Chamber of Mines and Energy said 'we have excellent relationships building up' with communities. (Ad, 5 July, p39)

Maralinga

Maralinga, once the site for British atomic bomb testing, is to be turned into a tourist destination with caravan and camping facilities. South Australian Aboriginal Affairs Minister, Mr. Brown, said the ambitious plans would go ahead after the site was returned to its traditional owners. Land at Emu, west of Maralinga Village, will be returned to the Maralinga Tjarutja Aboriginal community as soon as the contamination in the area is removed. The SA Government has given a commitment that these lands will be added to community freehold lands once the clean up is satisfactorily completed. (Ad, 17 July, p3)*

Gawler Craton

Greenfell Resources announced a two year clearance access had been negotiated with the Aboriginal communities for four tenements through the South Australia Aboriginal Land Rights Movement. Under the agreement which covers all obligations of the Federal and State Native Title Act as well as Aboriginal Heritage legislation, Grenfell will reimburse the communities for the surveying costs, but is not required to make any up front payments. While Grenfell is the first company to execute an access clearance agreement covering Native Title issues, it is thought that other companies are close to settlement. Grenfell Director, Nick Limb, said that the agreement provided an 'excellent model' for successful negotiations between Aboriginal groups and mining companies. (Aus, 24 July, p26)*

AMENDMENTS

The Government has agreed to an Opposition request from Gareth Evans to meet to develop a co-operative approach to native title. Evans said the 10 Point Plan was unworkable and would be challenged in the courts and opposed in the Senate. Both parties have said a double dissolution would damage the nation. The Opposition is opposed to extinguishment but legislation giving certainty to title, validated in anticipation of a different Wik decision,

providing a higher threshold test and clearer right to negotiate without breaching the Constitution, is open for discussion. (*Aust, 2 June, p1*)*

Criticised by the Federal Court Judge Justice Sackville as ‘ambiguous and incomprehensible’ and possibly in breach of the Racial Discrimination Act (*Age, 2 June, p7*)*, the 10 Point Plan has been defended by John Anderson, Primary Industries Minister as a ‘practical solution’. (*Aust, 2 June, p1*) Justice Sackville said point four, on rights to conduct ‘all elements of primary production’, involved a ‘series of ambiguities’. (*Fin R, 2 June, p4*)

The Government rejected Opposition assertions that the 10 Point Plan may be unconstitutional saying there is nothing in the plan contravening the Constitutional ‘race power’, it is not proposing blanket extinguishment of native title on pastoral leases and it recognises the common law right to claim native title on pastoral leases. Senator Minchin said the Labor Government, under the race power, included provisions in the Native Title Act detrimental to native title holders. Upheld by the High Court in 1995 these included the validating regime, provision for compulsory acquisition of native title, allowing states and territories to confirm ownership of natural resources, allowing a range of government activities to affect native title and requiring claimants to pass a registration test. (*Press release, 2 June*)

The Prime Minister ruled out changes to the Wik 10 point plan in a meeting with tomorrow’s meeting with the Opposition. (*CT, 3 June, p1,2*)* The United Graziers association executive director, Michael Prendergast said Mr Howard was ‘confirming farmers’ worst fears that he couldn’t be trusted on native title’. Farmers were concerned that Mr Howard would go for a short term ‘political fix’ and were strongly opposed to codifying rights. (*CM, 3 June, p4*)

Over 2000 people have signed an electronic Wik petition calling for Native Title Act amendments to comply with international non-discrimination principles and to promote reconciliation. (*Press release, Senator Stott Despoja, 3 June*)

Opposition members outlined key points for the meeting with the Government on the 10 Point Plan. They believe the plan is unworkable and implementing it would trigger a High Court challenge. They have concerns over the definition of allowable pastoralist activities and winding back of the right to negotiate for native title holders. The Prime Minister claims it strikes a balance between Aboriginal and pastoralist rights. (*Fin Rev 4 June, p4*) Daryl Melham, Opposition spokesperson on Aboriginal Affairs, doubted the meeting would make progress. In the Senate, the Democrats, the Greens and Independent Brian Harradine have expressed reservations about the plan. (*Her Sun 5 June, p10*)

Mr Beazley said the Opposition ‘fundamentally disagreed’ with the Federal Government’s Wik ten point plan and believes the government can only legislate under the ‘race’ power in the Constitution if the effect is ‘beneficial’ to Aboriginal people. By widely defining allowable pastoral activities, upgrading of pastoral leases, extinguishment of native title by States and removal of native title holders’ right to negotiate over mining, the plan cannot be construed as beneficial. (*Fin Rev, 5 June, p7*)

Talks between the Prime Minister, Senator Minchin, Aboriginal Affairs Minister Senator Herron and Opposition leader Mr Beazley, Mr Gareth Evans and Opposition Aboriginal Affairs spokesperson, Daryl Melham failed to reach agreement on the Wik plan. Disagreement centred on the possibility of a High Court challenge with Mr Howard standing by the package as the ‘appropriate response’. Mr Beazley said the talks were ‘useful and civil’ but a response would not be made until the legislation was examined. (*CM, 5 June, p2*) A further meeting will be held after the Wik legislation has been drafted. The Prime Minister said he would not accept any changes to key elements of the plan and Mr Beazley said the Opposition was determined that ‘at the end of the day we should emerge with decent legislation which creates certainty for all parties’. (*Aus, 5 June, p2*)

Greens Senator Dee Margetts said the government’s response to Wik was based on two key myths, that the 1993 Native Title Act extinguished native title on pastoral lease and that the pendulum had swung too far in favour of Aboriginal people. She said Senator Minchin had acknowledged that ‘in the case of pastoral leases which were validly granted, there will be no extinguishment of native title’ and that the High Court judgement says no more than Aboriginal people may have some remnant rights in some pastoral leases where the nature of the leases did not result in Aboriginal people being excluded from the land. Senator Margetts said the Prime Minister’s comment was fundamentally racist in its context, drawing a parallel with responses to other High Court determinations with respect to issues such as trusts and mortgages were not seen as swinging the pendulum too far in favour of banks. (*Press release, 5 June*) Senator Margetts criticised the former Labor government for encouraging the belief that the Native Title Act gave something extra to Aboriginal people and Torres Strait Islanders and the NFF for not fully informing members about the implications of the Wik decision. (*West Aus, 6 June, p4*)

Senator Minchin refuted Senator Margetts’ claims that the government assumed or claimed the Native Title Act extinguished native title on pastoral leases. He said that the Act was adopted on the presumption that under common law pastoral leases extinguish native title and that therefore the Act would not apply on pastoral leases. (*Press release, 6 June*)

The Prime Minister said the first draft of the Government’s Wik 10 Point Plan legislation was being prepared in consultation with Commonwealth and State. Mr Howard said it would not include blanket extinguishment. (*Daily Tele, 9 June, p2*)* Opposition leader, Kim Beazley, said it was a ‘national tragedy’ that the next election would be fought on the issue of Wik. (*Aus, 9 June, p3*)

Noel Pearson agrees with Mr Beazley’s comment that the fourth group of players to governments, industry and indigenous people are the Australian tax-payers. In Cape York where gross income from cattle is about \$5 million per annum he says the taxpayers’ bill for extinguishment could be \$1-2 billion. He defines four categories of costs, legal and administrative, government compensation costs, compensation costs to native titleholders for extinguishment and possible costs paid to government on behalf of leaseholders for upgrading to freehold under Queensland National Party policy. Pearson suggests an alternative ‘just outcome’ could be secured for pastoralists and Aboriginal people in a ‘financially neutral way’. (*CM, 7 June, p32*) Gerard Henderson says the Prime Minister has given different

messages to different audiences when explaining implications of compensation and upgrading of pastoral leases to freehold. (*SMH, 10 June, p19*)

A High Court challenge based on section 51(26) of the Constitution, the ‘race power’, could postpone the certainty sought by government following the Wik decision. The section provides for the Commonwealth to make special laws for Aboriginal people. Professor Tony Blackshield said the restricted view of the power, that its use must be of ‘benefit’ to Aboriginal people is ‘very controversial’ and a reasonable approach would be to look at the effect of the law as a whole rather than the effect of every provision. A challenge in the High Court relating to the Hindmarsh Island affair may clarify the disagreement over interpretation. (*Aus, 10 June, p5*)

Mr Howard replied to a letter from grain-growers and graziers following the Longreach meeting saying his 10 Point Plan did not discriminate against rural landholders and that the legislation will confirm that freehold title, residential and many agricultural leases extinguish native title. He said that the legislation will allow government infrastructure to be built, not withstanding native title; allow the removal of the right to negotiate regime in cities, towns and on pastoral leases and; allow claims to continue in relation to vacant Crown land and over some leasehold land. Mr Howard also said that claims for exclusive possession will not be able to be made over pastoral leases. He said in the letter ‘it is my intention not to accept any amendment to the basic principles of the 10 Point Plan in the Senate’. (*CM, 12 June, p6*)

The National Farmers’ Federation said that it has always supported access to pastoral leases for traditional purposes but a statement on ABC radio by David Byrne of the Cape York Land Council showed that ‘claimants view pastoral leases in a much more commercial context’ with most claiming exclusive possession’. NFF President, Donald McGauchie, said some recent claims with the NNTT may be a threat to farmers’ activities and the environment. (*Press release-NFF, 12 June*)

ATSIC representatives in the NT have rejected the 10 Point Plan in a meeting of four regional councils in the Northern Zone. (*NT News, 12 June, p6*) The NSW National Party will move a resolution to agree to Mr Howard’s Wik plan at a state conference. (*Aus, 13 June, p3*)*

NNTT member, Mr Sean Flood has stood down from the Tribunal after publicly denouncing the 10 Point Plan which he said amounted to ‘complete dispossession’ and ‘massive breaches of human rights’. (*Fin R, 13 June, p3*)*

The Australians for Native Title and Reconciliation launch was addressed by former Senate candidate Peter Garrett on 16 June at Circular Quay. The group is opposing the 10 Point Plan. (*DTele, 13 June, p13*)

Mr Howard denied claims that he has sent ‘different messages to different audiences’. He said Cabinet had agreed that the Commonwealth will pay 75% of the costs to the states and territories for compensation arising from implementation of the 10 Point Plan, subject to conditions, and that he had written to state leaders about the policy. He said that it was fair

that native title holders be compensated if they must lose native title rights, that the Commonwealth contribute to compensation costs and that pastoralists pay for any betterment to their property. (*SMH, 14 June, p42*)

Mr Howard will begin consultations on the first draft of legislation based on the 10 Point Plan next week. (*WAus, 14 June, p35*)* Mr Fischer said at the NSW National Party state conference that Mr Howard's Longreach commitments would be kept. They include no restriction on pastoralists to carry out primary production activities, no negotiating rights for Aboriginal people in relation to primary production, Government control over waterways, Aboriginal access to pastoral leases only by arrangements where native title has not been determined and a sunset clause for native title claims. Backbencher Michael Cobb said the party had to come to terms with 'living in the real world' and support the 10 Point Plan, and that native title was a common law right. He was supported by party president Mr McDonald and deputy leader John Anderson. (*WAus, 14 June, p2*)

The Federal Government dismissed Opposition legal advice that the race powers of the Constitution can only be used to make laws that are beneficial to Aboriginal people. Senator Nick Minchin said that Labour's legal advice was flawed. He said that the question of detriment would not arise because the nature of the Wik legislation would be beneficial overall. The legislation will be presented in draft to the Prime Minister today. Senator Minchin said that it would preserve the High Court's ruling that native title and pastoral leases could co-exist. (*Age, 16 June, p6*) WA Greens Senator Dee Margetts warned that the track record of the ALP may lead the Greens to negotiate with the government over its native title plan. (*Aus, 16 June, p2*)

Proposed Wik legislation has been approved by the Coalition party room although Senator O'Chee and Mr Bob Katter are yet to indicate agreement. The government has indicated legal advice also says the 1967 referendum gave the commonwealth power to pass legislation affecting Aborigines only for their 'benefit'. (*CM, 25 June, p2*)

Queensland Premier Rob Borbidge is expected to support the Federal Government's Wik legislation. This would overcome the final Coalition hurdle to the Wik legislation. (*Aus, 2 July, p2*)* Mr Borbidge announced that the federal Wik legislation would exclude nearly 3000 leases from native title claims. A spokesperson for Senator Nick Minchin said that these leases would 'probably' go on the exclusion schedule, but no final list has been approved. (*Fin R, 2 July, p3*)

Former Prime Minister Gough Whitlam yesterday called the Government's 10-point plan in response to the Wik judgment potentially the 'most disastrous and shameful' chapter in Aboriginal history. He said that if legislation proceeds without further negotiation it would postpone justice. 'Justice will ultimately prevail, but in the meantime, unless there are negotiations now, on the basis of acceptance of the law, we shall have submitted ourselves to endless litigation before our courts and shame before the world'. (*Aus, 3 July, p2*)

Mr Geoff Clark from the National Indigenous Working Group on Native Title said yesterday that their arguments have had no impact on the Government. 'We will now concentrate on

our international and domestic efforts to gather opposition to the Wik legislation'. The group is now working on amendments to the native title legislation that can be moved in the Senate by opposition parties and independents. (*Age [Mel], 3 July, pA2*)

The National Farmers Federation said that Aborigines in their fight against the Wik legislation, wanted to control farms, not gain access to pastoral leases for traditional activities. Mr Donald McGauchie, the NFF president, said: 'What they want is the land, the power to control that land, or compensation, and that is why their arguments have been so fierce and at times so extreme'. (*Age, 4 July, pA8*)* Mr McGauchie's attack follows a Federal government briefing to the NFF on details of the draft legislation to implement Howard's 10 point plan. The Australian Conservation Foundation said the 10 point plan has disturbing implications for the future of land management in Australia. In the process of removing Aboriginal rights it would provide more rights to developers who would be able to propose and attempt 'many more inappropriate land uses'. (*CM, 4 July, p8*)

Former Liberal Prime Minister, Malcolm Fraser said yesterday that the Federal Government should not allow pastoralists to upgrade their leases to freehold. Mr Fraser commented that low land prices would allow pastoralists to upgrade their title, but taxpayers would pay possibly substantial compensation to Aboriginal people whose title was extinguished. Senator Minchin, parliamentary secretary responsible for native title, replied that 'States have always been responsible for land management in Australia and have always had the power to upgrade titles and compulsorily acquire land'. The Commonwealth will enable States to use this power by their agreeing to pay 75 per cent of the costs of compensation. (*Fin R, 8 July, p8*)*

In response to Mr Fraser's criticism of the Government's response to the High Court's Wik decision, Mr Howard stated that Mr Fraser did not understand the detail of his 10 point plan on Native Title. (*SMH, 9 July, p8*)

The Howard Government has published its proposed legislation to deal with Native Title. Native Title holders could previously negotiate at both the exploration and development phases. It will now be a once-only right and this should be maintained for all Native Title claimants once they pass a strict threshold test. (*Aus, 11 July, p9*)

The Government wants to give iron clad certainty to all people granted titles before the Wik decision. It also wants to be able to deliver ordinary municipal services and to regulate water and air space with certainty and without native title hassles. Any interference with native title would be compensated on just terms. (*Aus, 11 July, p9*)

The proposed amendments to the Native Title Act will confirm extinguishment of native title, not just on freehold, but on any other tenures that carry an automatic right of up-grading freehold. The only title holders who may be subject to co-existing native titles are those who do not have a right to upgrade and whose tenure is non-exclusive. The Native Title Act guarantees pastoralists the right to renew leases and State Government power to authorise primary production activity or farm-stay tourism without having to speak to a Native Title holder. (*Aus, 11 July, p9*)

Mr Ray Robinson, NAIDOC Aboriginal person of the year and Deputy Chairperson of ATSIC has said that the biggest problem for Aboriginal leaders in the next year is the Prime Minister's 10 point plan on Native Title. He also stated he had proposed his own 10 point plan which offered a compromise. *(CM, 12 July, p9)*

At a march to celebrate the end of NAIDOC Week in Melbourne, ATSIC member Geoff Clark told Kooris and other marchers, that the 10 point plan was a 'tool of oppression'. Mr Clark also stated that the onus on Aboriginal people to prove continuous association with the country to gain native title was absurd given Kooris had been locked out of many places for more than 20 years. He said 'this 10 point plan is legal dispossession of Indigenous people if it goes through in its unamended form'. *(HS, 12 July, p15)**

Queensland Premier Rob Borbidge has expressed doubt that the Federal Government's draft legislation on Wik will get through the Senate. *(CM, 12 July, pp 21,22)*

Rural lobby groups are focusing on areas they claim still leave them short of promises made by the Prime Minister. Concerns are likely to gain a strong forum at the National Party's Queensland conference this week. QLD Grain Growers Association President, Ian McFarlane, said 'the main concern was the ability the legislation could give claimants to claim title over land they had no existing association with'. He said that Mr Howard had assured pastoralists at a meeting in Longreach in May, that claimants would need a 'current, continuous, physical link' with the land they were claiming. *(Aus, 17 July, p2)**

A member of Britain's Human Rights Committee, Mr Godman, criticised the Government's proposed legislation. Senator Herron said that Mr Godman had only heard one side of the story and dismissed concerns about Australia's handling of the Wik issue. *(Tel M 24 July, p11)*

ATSIC's Chairman, Gatjil Djerrkura, has said that the proposed Native Title Amendment Bill is an attack on indigenous rights that will only cause further uncertainty and division. He says that native title is not a creation of the Native Title Act - it is the expression of the importance of traditional lands to indigenous communities and that discussions with the government earlier this year failed to develop into real negotiations that could lead to the protection of native title interests. Native title interests can range from concern about over-fishing and the impact of pollutants to access to ground water resources for community use. Mr Djerrkura lists the key concerns that ATSIC has with the implementation of the 10 point plan as:

- The validation of pre-Wik acts
- Proposals to confirm the forms of tenure that extinguish native title - seen as significantly pre-empting the common law recognition of Indigenous rights
- That the proposal based on the 'primary production' definition will permit, on non-exclusive agricultural or pastoral leases, many activities associated with primary production with higher impact on the land
- That the provisions dealing with the claims process include the imposition of time limits on the processes of the Act

- That the approach to statutory access rights takes no account of the dispersal of Aboriginal people from pastoral leases
- That the proposed amendments regarding water management permit de facto extinguishment of native title to onshore and offshore waters by ensuring that non-indigenous interests always take precedence. (*WAus, 26 July, p24*)

Gareth Evans said that the Opposition's bottom line on Wik is that there must be no defacto extinguishment and no undermining of the right to negotiate, particularly in relation to mining interests. (*Fin R, 28 July, p17*)

Senator Nick Minchin, the parliamentary secretary who has special responsibility for native title, dismissed as absolutely ridiculous calls by the National Aboriginal and Islander legal service secretariat for mediation by the United Nations or New Zealand to resolve the Wik dispute. ATSIC head Geoff Clark said 'the 10 point plan was not the product of negotiations with the indigenous people'. (*CT 31 July, p2*)*.

GENERAL NATIVE TITLE ISSUES

National

The federal Opposition and Democrats have called in Parliament for the names of pastoralists receiving legal aid for native title cases to be disclosed. The Attorney General declined to guarantee that wealthy pastoralists or groups had received assistance saying names are protected by privacy legislation and confidential. (*Sun Age, 1 June, p7*)

In a letter to the editor (*Aus, 6 June, p8*) Hal Wootten QC responded to criticism of Aboriginal leaders' public and media behaviour. He said the media often seek controversial comment in favour of in depth interviews. Aboriginal leaders represent a community 'deeply ruptured and hurt'. In the Wik debate their constant but ignored refrain was to 'please sit down and let us talk things out.' 'The symbols of the Aboriginal struggle are not of violence and rejection but of a peaceful appeal to the humanity of the non-Aboriginal community'. (*Aus, 6 June, p8*)

Helen McInerney of the NNTT has commented on the failure and refusal to negotiate land claims outside the court system. Ms McInerney said that whilst it is perfectly reasonable for parties to have legal representation, lawyers and peak bodies were being used increasingly by pastoralists in native title land claims and some farmers groups have advised members not to attend mediation. A breakdown in mediation means the case must go to court. (*HS, 11 June, p15*)

Robert Thorpe failed in the High Court to have it declared that the Commonwealth had a special or fiduciary obligation to indigenous people. He hoped the Court would request an advisory opinion from the International Court of Justice. (*CT, 13 June, p4*)

Greater autonomy for the Torres Strait Island area has been granted with the passing of the ATSIC Amendment (TSRA) Bill which will give the Torres Strait Regional Authority a

separate budget allocation from ATSIC. (*Press release, Minister for Aboriginal and Torres Strait Islander Affairs, 25 June*)

A program to help local councils and communities work with native title was launched by the Australian Local Government Association and the National Native Title Tribunal. John Campbell, President of the Association said, 'We need to generate better understanding amongst the parties of each other's position, and especially to promote negotiated outcomes'. (*Rep, 10 July, p23*)

The inaugural Women for Wik meeting was held in Sydney. It was stated at the meeting that Australians should strongly oppose the Howard Government's plan to extinguish Native Title because it was 'unnecessary, divisive, unjust and unworkable'. (*CT, 13 July, p2*)*

Sir Anthony Mason, a former High Court Chief Justice, criticised Attorney General, Daryl Williams, for failing to defend the court from Wik-inspired political attacks that threatened its independence and the rule of law. Mr Williams said that many of the comments made in the three months after the Wik decision were 'inappropriate' and that he had spent 'a lot of time responding to those and rejecting the criticism'. Sir Anthony said it was plain nonsense to allege the Wik decision was an instance of judicial activism when it was clearly a classical question of real property law. He also said a letter about the Wik case written by Chief Justice Gerard Brennan to Mr Fischer was 'an appropriate and correct response'. (*Aus, 17 July, p5*)* Sir Anthony also described Mr Fischer's observation that judges who were 'Conservative with a capital C' ought to be appointed to the court because of its controversial Wik ruling on Native Title as 'a very foolish remark'. (*CT, 17 July, p2*) Mr Fischer responded that he had criticised the court's judgement as was his right, and the fact that it was a split decision justified this. (*Age, 17 July, pA2*)

A claim by the Pitcairn Islanders that they were indigenous to Norfolk Island was flawed and unnecessarily divisive, Territories Minister Warwick Smith said. He also said that the claim has only a minority support on the island and is not accepted by the Commonwealth. (*Tel M, 26 July, p6*)

New South Wales

The Director of Public Prosecutions, Nicholas Cowdrey QC, has asked staff to support a Prominent Citizens Native Title Statement. The petition urges politicians to 'endorse publicly and unequivocally the High Court's native title decisions as just and correct decisions'.

(*D Tel 4 June, p2*)

Queensland

The Labor Party will vote on election platform policies at their state conference on the weekend. The policies include compensation to Aboriginal people for loss of land, the setting up of land acquisition programs for urban Aboriginal people unable to show continuous traditional links to land, and providing financial assistance for identification of land of significance. (*CM, 6 June, p6*)

The State government has contested in the Court of Appeal, a 1996 decision by a Mt Isa magistrate upholding a native title right to hunt otherwise protected animals. Murrandoo Yanner was acquitted of charges under the Nature Conservation Act for spearing crocodiles in a creek on Bundella Station leased by the Carpentaria Land Council. The crown has argued that the native title right was extinguished through the Fauna Conservation Act 1974. (*CM, 6 June, p16*) Mr Yanner's lawyer, Angelo Vasta QC, said it is the first case since the 1993 Native Title Act dealing with the question of whether Aborigines have the right to hunt and fish over territory which their ancestors had the right to hunt and fish. (*CT, 9 June, p4*)

Western Australia

The full bench of the Federal Court dismissed an appeal by the WA Government over a ruling by Justice Lee which allowed 'gender restrictions' to apply during an upcoming native title claim. The Court recognised that Aboriginal law and customs sometimes meant that discussion of some culturally sensitive issues could only be amongst members of the same sex. The implication for native title claims is that restricted evidence can be given and not passed on to lawyers of the opposite sex, or published in court documents. (*Aus, 9 July, p4*)

An Indigenous Art gallery is being stopped from opening in East Perth due to Native Title claims. Aboriginal activist Clarrie Isaccs claims the WA government rejected the proposal because the land was subjected to several claims. (*ST, 13 July, p21*)

The Miriuwung-Gajerrong case could become a test case for Native title rights over water. If the Federal Court does find Native Title rights exist over water, the state is likely to appeal. (*WA, 21 July, p6*)* Premier Richard Court defended the cost of fighting the claim, but said he was angry taxpayers money was being spent on both sides. He also said the Government had to oppose a claim that called for exclusive possession and occupation of such a big area. Mr Court claimed that the Mabo and Wik decisions had said people could not have exclusive occupation and possessions of lands. (*WAus, 23 July, p13*)*

South Australia

The Ngarrindjeri people have launched a High Court challenge to the Hindmarsh Island Bridge Act and will present their case to the First Nations' International Court of Justice. Lawyer Stephen Kenny said that Hindmarsh was no longer a local issue but a national issue with national significance to the rights of indigenous people. (*Aus, 16 June, p2*)

Victoria

The Victorian Farmers' Federations says it recognises mediation as necessary and encourages members to become informed about the native title process before mediation. The VFF has more than 150 members registered as interested parties in the Wimmera claim area. (*HS, 13 June, p29*)

RECENT PUBLICATIONS

Native Title Research Unit Publications

The following NTRU publications are available from the AIATSIS Publications Sales Assistant (Tel: 02 6246 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 Perspective's

(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 1996 and 1997:

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

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

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

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

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No. 17: ***Regional Agreements in Australia: an overview paper*** by Patrick Sullivan (Regional Agreements paper no. 1)

No. 18: ***The Proof of Continuity of Native Title: an anthropological perspective*** by Julie Finlayson

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

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

Other Publications include:

A Practical Guide to Choosing Consultants for Native Title Claims, by Paul Burke

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