



# AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

GPO BOX 553  
CANBERRA ACT 2601  
Phone 02 6246 1161  
Fax 02 6249 1046  
E-mail: [ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au)  
Website: <http://www.aiatsis.gov.au/>

## NATIVE TITLE NEWSLETTER

No. 6/98

### NATIVE TITLE IN THE NEWS October - November 1998

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

*Ad* = Advertiser (SA)

*Age* = The Age

*Aus* = Australian

*CM* = Courier Mail (QLD)

*CP* = Cairns Post

*CT* = Canberra Times

*FinR* = Financial Review

*HS* = Herald Sun (VIC)

*LE* = Launceston Examiner

*Mer* = Hobart Mercury

*NNTT* = National Native Title Tribunal

*NTA* = *Native Title Act 1993*

*NTN* = Northern Territory News

*SC* = Sunshine Coast Daily

*SMH* = Sydney Morning Herald

*Tel M* = Telegraph Mirror (NSW)

*WA* = West Australian

*WAus* = Weekend Australian

## CLAIMS

### New South Wales

#### Arakwal People [NNTT Ref#NC95/1]

Arakwal native title applicants and the Byron Bay Shire Council have signed an agreement at a ceremony in Byron Bay. It is the first substantial agreement between a local shire council and native title applicants in NSW.

The Heads of Agreement sets out a framework for ongoing consultations between the Council and Arakwal people and resolves a number of issues on priority developments in the area.

The agreement establishes the Byron Shire Council Aboriginal Consultative Committee, comprising representatives of the Council and the Arakwal community. The Committee will

make recommendations to Council on a planning strategy for Byron Shire that takes into account the concerns of the Arakwal community on specific development proposals.

Tribunal President, Justice Robert French said that while the agreement resolves a number of issues on specific developments, the crucial thing is the commitment to ongoing consultations. There is now a solid framework to address priority issues as they emerge.

The Arakwal native title application was lodged with the National Native Title Tribunal on 22 December 1994 and accepted by the Tribunal on 20 September 1995. Mediation began in July 1996. In April 1997, an agreement was reached between the State Government of NSW and the Arakwal applicants regarding a new State Recreation Area. The park was created on 9 July 1997. The Tribunal continues to facilitate discussions between all parties. (*NNTT Media Release, 16 Oct*)\*

#### Bandjalang People [NNTT Ref#96/16]

Formal mediation of the Bandjalang native title application at Evans Head began on 5 November with a meeting between the applicants and other registered parties.

The application for recognition of native title over land, sea and inland waters in and around Evans Head was lodged on 17 May 1996. It includes parts of the Broadwater National Park and Bandjalang National Park, and extends five kilometres out to sea.

The application was accepted for mediation by the Tribunal in October 1996, and public notification closed in April 1997. Since that time, interested parties to the mediation have been registered and the Tribunal has held preliminary discussions with all groups to prepare for mediation.

Talks continue on 6 November between the applicants, the NSW Government, and Richmond River Shire Council. (*NNTT Media Release, 6 Nov*)

#### Bunjalung People [NNTT Ref#NC96/8, NC96/14]

Two Bunjalung native title applications in the Northern Rivers region move into formal mediation this week with meetings in Grafton on Thursday 26 November and Tabulam on Friday 27 November.

The claims for recognition of native title were lodged by the Bunjalung people in 1996. Since then, the Tribunal has conducted public notification to identify people with a direct interest in the area, and held preliminary discussions with all groups to prepare for mediation.

Tribunal Member Mr Kim Wilson, who will chair the meetings, said that formal mediation begins with a plenary conference that brings together the native title applicants and all the other registered parties to listen to each other's concerns and objectives, and to set out a framework for further talks.

The two claims moving into mediation are:

- 1) NC96/8: lodged in March 1996 on behalf of the Bunjalung people of Mulabugilmah and Baryugil over national parks, forests and crown reserves in the Shires of Copmanhurst, Nymboida, Severn and Tenterfield.
- 2) NC96/14: lodged on behalf of the Bunjalung people of Tabulam in May 1996. It covers land and waters in the parishes of Tabulam, Timbarra, Chauvel, Sandhills, Evans, Black

Camp, Picarbin and Emu, Town of Tabulam, village of Mallanganee. It covers land in the Shires of Kyogle and Tenterfield. (*NNTT Media Release, 24 Nov*)

## **Queensland**

### **Wakka Wakka People [NNTT Ref#QC98/47]**

A native title application has been lodged with the National Native Title Tribunal on behalf of the Wakka Wakka people. The application covers areas within the Burnett district, including national parks and conservation reserves, unallocated State land and timber reserves. (*Biggenden Weekly, 8 Oct, p1*)\*

### **Wulgurukaba People #1 and #2 [NNTT Ref#QC98/30, QC98/31]**

The National Native Title Tribunal will host two public information sessions at the Arcadia Resort, Magnetic Island, on Wednesday 14 October. Tribunal Member Mr Geoff Clark said the purpose of the meetings was to provide an update to residents on the progress of the Wulgurukaba applications since the Tribunal's last visit to the island in July, and to explain the next steps in the process. (*NNTT Media Release, 12 Oct*)

### **Jinibara People [NNTT Ref#QC98/45]**

A native title application covering much of north-west Brisbane to the Caboolture Shire and west to Nanango, has been lodged on behalf of the Jinibara people. (*CM, 26 Oct, p2*)

### **Waanyi People**

The Waanyi people have united to pursue a single native title claim. The claim replaces the eight overlapping claims in the Gulf of Carpentaria region. A three day meeting, held on Ganggalida land, was convened by the National Native Title Tribunal and organised and funded by the Carpentaria Land Council to explore possibilities for agreement over native title claims in the Gulf.

Over 100 senior elders and other representatives of Waanyi and neighbouring Ganggalida, Garrawa, Mingginda, Indjilandji, Landil, Kaiadilt, and Yangkaal groups attended the meeting. The meeting agreed unanimously to combine their eight overlapping native title claims into a single Waanyi Nation claim. The claim will be managed by a newly established steering committee representing all Waanyi families.

Tribunal member Dr Mary Edmunds—who facilitated the meeting—said Waanyi people had achieved a significant step towards the recognition of their native title. Dr Edmunds said all parties recognise the contribution towards this achievement made by the Coordinator of the Carpentaria Land Council, Mr Murradoo Yanner, congratulating him, the Waanyi and neighbouring peoples. (*NNTT Media Release, 5 Nov*)\*

### **Fraser Island**

A land and sea rights crown law claim over Fraser Island and surrounding areas has been struck out by the Supreme Court in Queensland. The State and Commonwealth Governments have fought the claim on the basis that it was incompletely presented. Justice John Muir made the decision after giving the claimants several opportunities to amend the claim. The claimants included the Dalungbara, Batchala and Ngulungbara peoples. (*Aus, 5 Nov, p8*)\* Mr John Lee Jones, representative for the claimants, said he would appeal the decision. He argues that the Indigenous peoples do not, under common law, have to show a continuation of customs, language and association with the land. (*Ad, 4 Nov, p33*)\*

### **Undumbi People [NNTT Ref#QC97/44]**

A native title application lodged on behalf of the Undumbi people covers most of the Sunshine Coast and extends two kilometres out to sea. Included areas are State forest, reserves, national parks and unallocated state land. Representatives of applicants have been

invited to speak to Maroochy Shire Council about the application. (*Sunshine Coast, 12 Nov, p3*)

#### **Turrbal People [NNTT Ref#QC98/26]**

The Turrbal people are contemplating a Federal Court injunction to stop the construction of a six-lane highway in Brisbane. Maroochy Barambah, spokesperson for the Turrbal people, says the route would decimate Victoria Park, which the people want to preserve as part of their community and history. The Turrbal people say they have been excluded from negotiating the path of the highway. They have lodged a native title claim in order to have a say on development in places of significance around Brisbane. (*CM, 23 Nov, p8*)

### **Western Australia**

#### **Perth Region**

The National Native Title Tribunal has referred eight metropolitan native title applications to the Federal Court for resolution. Five of the eight applications were lodged by Mr Corrie Bodney of the Ballaruk people; two were lodged by Mr Robert Bropho on behalf of the Swan Valley Nyungah community and one was lodged by Mr William Warrell of Mogumber.

Tribunal Registrar, Christopher Doepel, said intensive efforts to bring the parties together to resolve overlaps and other issues had been unsuccessful, leaving the Tribunal with no option but to have the applications tested in Court. Mr Doepel said the Western Australian Government's 11 preconditions to entering into mediation included a requirement that there were no overlaps in the applications. (*NNTT Media Release, 9 Oct*)\*

#### **Martu People**

A major breakthrough has been achieved in the Martu people's effort to achieve formal recognition of their native title rights over a 153 000 square kilometre area of the Pilbara centred on the Rudall River National Park.

The National Native Title Tribunal today announced it had assisted five language groups of Martu people to reach an agreement to withdraw two native title applications and combine efforts on a third application, clearing a major obstacle to resolution of the native title issues. The elimination of overlaps clears the way for formal negotiations with the State Government for recognition of native title.

The Government's requirement that overlaps be eliminated, as a precondition to their entering into mediation, poses particular difficulties in Western Australia where there are a number of overlapping applications. It is one of the reasons that there have been no agreed determinations of native title in Western Australia while there have been two in Queensland, which has fewer applications.

The remaining application encompasses the communities of Kunawaritji (Well 33), Punmu and Parnngurr (Cotton Creek) and is over vacant Crown land and the Rudall River National Park, and includes some mining tenements.

The Martu people were seeking recognition as the traditional owners of the country, the right to maintain their traditional association with the land and the right to have a say over any activities on the land. (*NNTT Media Release, 4 Nov*)\*

#### **Miriuwung Gajerrong #1 [NNTT Ref#94/2]**

National Native Title Tribunal President, Justice Robert French, said the Federal Court's decision that native title existed over part of the land claimed by the Miriuwung and

Gajerrong peoples would make a significant contribution to the resolution of native title claims around Australia.

Justice French said the decision on the 7800 square kilometre claim on the Western Australian and Northern Territory border, clarified a number of important issues in the relatively new field of native title law.

Justice French said the decision also underscored the importance of mediation as a route to resolving native title applications. The Federal Court process was expensive, adversarial and a protracted exercise for all parties. Mediation is still necessary to put the Court's decision into practical effect.

The native title application was lodged with the Tribunal on 6 April 1994. The Tribunal referred the matter to the Federal Court on 7 February 1995 after a lack of progress in mediation. (*NNTT Media Release, 24 Nov*)\*

Justice Malcolm Lee of the Federal Court, found that native title had been successfully established by the Miriuwung and Gajerrong peoples. The court recognised substantial native title rights, including rights to possess and occupy the land, control access to land, the right to trade in resources on the land, and the right to control the use and enjoyment of the land and its resources. Justice Lee said that native title exists in the region with some exceptions. Roads, public reserves, power and telephone stations and some agricultural land, are areas that extinguish native title rights. (*FinR, 25 Nov, p7*) (*Age, 25 Nov, pA2*)\*

There is speculation that the Howard Government may have to review its native title legislation in light of the Miriuwung-Gajerrong decision. (*SMH, 25 Nov, p3*)\*

Western Australian Premier, Mr Richard Court, said the State may appeal the Federal Court decision in the Miriuwung-Gajerrong native title case. Lawyers have warned that if the State Government proceeds with legislation to extinguish native title over pastoral leases and other areas of land, it could be up for massive compensation claims. (*FinR, 26 Nov, p3*)\*

The Miriuwung-Gajerrong decision recognised native title rights on areas of land that the Commonwealth Government had earmarked for extinguishment under their recent amendments to the NTA. A schedule attached to the Act lists where extinguishment of native title can be 'confirmed' through State legislation. The Government had previously claimed that the list only included land subject to tenures and acts that extinguished native title. (*Aus, 26 Nov, p2*)

The Commonwealth Attorney-General, Mr Daryl Williams, said that the Government would not have to rethink its native title legislation after the recent Federal Court decision. He said that where there is an inconsistency between a native title right and a valid lease, the NTA allowed the rights of leaseholders to prevail. (*Age, 26 Nov, pA6*)\* Mr Williams said that the decision is primarily a matter for the Governments of Western Australia and the Northern Territory rather than the Commonwealth Government. (*Attorney-General Media Release, 25 Nov*)

#### Karratha Area (2 claims)

The Western Australian Government has called for expressions of interest on development of Karratha land into residential areas. There are two native title claims over the area and the

Government has put the onus on successful tenderers to negotiate access agreements with native title applicants. (*FinR*, 19 Nov, p50)

### **Northern Territory**

#### **Alice Springs [NNTT Ref#DC94/2]**

The Federal Court hearing into the Alice Springs application will re-open before Justice Olney. The application covers areas of vacant Crown land in and around Alice Springs. It was referred to the Federal Court after the Northern Territory Government refused to negotiate with traditional owners. (*NTN*, 25 Oct, p4)

## **MINING AND NATURAL RESOURCES**

### **Queensland**

#### **Gold Coast – Fishing**

A fishing contest has been cancelled at the last minute with State Government departments unable to grant a permit. Under new native title legislation the departments have to notify possible claimants before granting permits or leases. It is understood that the Queensland Fisheries Management Authority would not have had time to do this. (*CM*, 6 Nov, p28)\*

The Queensland Government has decided to approve six leases to allow a nickel and cobalt mining project near Rockhampton to proceed. The land is required for extraction of minerals and for a processing and refining plant. Native title is still uncertain in the area and four leases remain to be decided. Premier Peter Beattie believes the native title issues can be resolved. (*CM*, 10 Nov, p4)

#### **Century Zinc Mine**

The Queensland Government has announced it will compulsorily acquire the native title rights to a strip of land that is the last section of a power line route from Gunpowder to the Century Zinc mining project. The Government wanted to make sure the project went ahead after talks again broke down between power company NORQEB and traditional owners. The Government faces penalties of \$50 000 a day, in the first instance, if power to the mine is delayed beyond 1 August 1999. The Queensland Indigenous Working Group is concerned that the Government's action may have set a dangerous precedent. (*Aus*, 27 Nov, p8)\*

### **Western Australia**

The National Native Title Tribunal today confirmed that 31 Western Australian native title applications would be put through the stringent new registration test earlier than expected because of the Western Australian Government's decision to grant a series of mining related tenements under the provisions of the amended *Native Title Act 1993*.

Tribunal Acting Registrar, Hugh Chevis, said the WA Government had advised the Tribunal of its intention to grant 25 mining tenements, mainly in the Goldfields and Mid West, which impacted on 31 existing native title applications.

The Government's proposal to grant mining related tenements in key areas triggered an acceleration of the registration test. The test will now have to be applied to affected applications within four months. Some of the individual tenements affected as many as eight native title applications, requiring all of them to face the registration test several months earlier. The Tribunal will devote additional resources to managing the registration test process given the shortened time frames.

Goldfields applications affected are Koara, Ngurludharra-Waljen, Wutha, Wutha #2, Harris, Ngadju, Wheelman, Dimer, Pugan family groups, Bullenbuk-Noongar, Waljen people, Tjinintjarra family group, Thithee Birni Bunna Wiya, Yulbarri nomad people, Mugung people, United North East, Nardoo people and Bibila Lungutjarra.

The Miriuwung-Gajerrong applications in the Kimberley are affected, as are the Nyiyaparli people's application in the Pilbara.

In the mid-west region, applications affected were Pandawn, Mullewa Wadjari and Widi Mob, while in the south west the Nyungah petroleum, Nannup people, Clara Nobel, Corbett-Noongar, Kevin Miller, Gnaala Karla Booja, Clarrie Ugle-Noongar applications will now face the registration test sooner. (*NNTT Media Release, 20 Oct*)\*

#### **Fitzroy River Dam**

The proposal to dam the Fitzroy River at Dimond Gorge to irrigate cotton fields in the Kimberley has been dropped. Western Agricultural Industries aim to grow cotton and crops around Broome, irrigating the land. Now that the Dam proposal has been dropped, the company is looking at alternatives such as the use of groundwater or 'on-farm' storage. (*WA, 10 Nov, p1*) The area proposed for cotton crops is the traditional land of the Karajarri people from the Bidyadanga community. They are worried that pumping groundwater for use in irrigating the cotton crops would dry up waterholes and springs and increase salination. They feel the proposals to be a threat to their traditional way of life. (*WA, 11 Nov, p28*)\*

#### **Northern Territory**

The National Native Title Tribunal has approved the compulsory acquisition of native title rights and interests in an area that is subject to native title applications by the Larrakia and Dangkalaba peoples. The approval clears the way for the construction of a liquefied natural gas (LNG) plant and ancillary projects on 600 hectares of land at Wickham Point in Darwin Harbour.

National Native Title Tribunal Member Professor Doug Williamson QC, who ruled on the matter, said the proposed development would have a significant adverse impact on the activities and way of life of the Larrakia people. But he said it was equally clear that the development, by Phillips Oil Company, could result in substantial economic and public benefits.

Professor Williamson decided in favour of the project provided that:

- the native title parties were granted access to the land and waters in the Wickham Point precinct;
- cultural and environmental protection obligations were observed;
- native title holders were involved in liaison committees related to the project; and
- employment and training opportunities on the project for native title holders were encouraged.

Compensation is yet to be determined. (*NNTT Media Release, 2 Oct*)

## **AGREEMENTS**

### **National**

The Goldfields region will host a conference next month to explore a new, more flexible process for making agreements about land use.

The one day conference called *The future of future acts* will bring together mining groups, State and local governments, native title claimants and their representatives to discuss the new provisions for Indigenous land use agreements in the amended *Native Title Act 1993*.

The conference, convened by the National Native Title Tribunal's Goldfields Mediation Service, will be held in Kalgoorlie on Tuesday 1 December 1998. The Chamber of Minerals and Energy, the Association of Mining and Exploration Companies and the Australian Mining and Petroleum Law Association have also supported the conference. The conference program is designed to explain the new provisions for agreements in the Act and explore possibilities for negotiated outcomes. The forum will also explore stakeholder perspectives and issues, and provide opportunities for conference participants to develop practical skills in agreement negotiation.

The Tribunal sees this forum as an important early step in capitalising on the new provisions in the Act and fostering a culture of negotiation to deal with development and native title issues. Indigenous land use agreements can be used to fast-track usage of land and water in ways that address cultural concerns, while leaving unresolved issues to be determined by other processes under the NTA, or complementary State or Territory laws.

The NTA, as amended, strengthens the contractual basis of agreements through a process of registration with the National Native Title Tribunal, or equivalent State or Territory body. (*NNTT Media Release, 16 Nov*)

### **New South Wales**

#### **Arakwal People [NNTT Ref#NC95/1] (see Claims section)**

An agreement between the Byron Shire Council and the Arakwal people was signed at Byron Bay yesterday. A part of the agreement, the Arakwal people will have input towards planning and development through a consultative committee. The Premier was present at the signing as official witness. (*SMH, 17 Oct, p7*)

#### **Walgalu and Wiraduri Peoples, Adelong Consolidated Gold Mines**

An agreement relating to gold mining activities by Adelong Consolidated Gold Mines NL has been lodged with the National Native Title Tribunal. The agreement was lodged by the New South Wales Aboriginal Land Council on behalf of the Walgalu and Wiradjuri peoples and is the first Indigenous land use agreement to be lodged under the amended NTA. The Land Council is confident the agreement will be accepted. (*Rural News, 23 Oct*)

#### **Forests Agreement**

A landmark agreement between the New South Wales Aboriginal Land Council and the State Government has been hailed as an important progression in the recognition of Aboriginal land rights in New South Wales. The agreement concerns the implementation of the *Forests and National Parks Estates Bill 1998*, and ensures that the dedication of any national parks created under the Bill, as well as their management, will comply with the *Racial*

*Discrimination Act 1975* and the NTA. A framework agreement will now be negotiated to enable this to be implemented.

Land Council Chairperson, Cr Ossie Cruse, said that the agreement involves the recognition that native title rights are potentially still held by Aboriginal people in many areas. Where these rights haven't clearly been extinguished the Government has agreed to negotiate. (*NSWALC Media Release, 23 Nov, p1*)\*

This agreement marks a major turnaround in the way the Government will deal with Aboriginal people in regard to Crown land. Previously, Aboriginal people had to prove their native title exists in any area declared a national park. Now, unless native title has been clearly extinguished, it is assumed that there are native title holders with whom agreements must be struck. A spokesperson for the Premier described the agreement as one which will promote sitting down and talking, rather than going to court. (*SMH, 24 Nov, p3*)

## **Victoria**

### **Mount Hotham**

The Gunai/Kurnai peoples have struck a land agreement with the Victorian Government and Mount Hotham Ski Company. The agreement, made outside the NTA, paves the way for the construction of an airport that will be central to the development of the Mt Hotham and Falls Creek snowfields. Under the agreement the land for the airport has been excluded from the native title claim so construction can be guaranteed. (*HS, 12 Oct, p3*)

## **Queensland**

### **Lawn Hill National Park Area**

The Queensland Government and the Waanyi people have agreed to negotiations over the selling an area of land to the Government. The land is owned jointly by the Waanyi people and Pasminco's Century Zinc project and is adjacent to the World Heritage-listed Lawn Hill National Park. The Government wishes to protect the area as part of the Park and are hoping to secure the land for a reasonable price in return for Waanyi involvement in the management of all aspects of the area. Pasminco are reported to have said that they would agree with the decision the traditional owners made in regard to the land. (*North West Star, 28 Sept, p3*)\*

### **North Stradbroke Island**

A community workshop has been held as part of the North Stradbroke Island Native Title Process Agreement. Among other things, participants discussed future employment prospects, the effect of sand mining on the island and management of tourism and housing. The workshop canvassed community views to enable consultants to focus on issues of importance. (*Bayside bulletin, 3 Nov, p3*)

### **Pasminco-Century Gulf Agreement**

As part of the 1997 Agreement, Indigenous people are taking part in training and development programs. Some trainees are studying for a rural skills certificate and will be placed on stock stations in the region. Other trainees are gaining skills in catering, clerical work, mining and engineering. (*Townsville Bulletin, 21 Nov, p6*)

### **Koutha Aboriginal Development Corporation**

Koutha Aboriginal Development Corporation has entered into Memorandums of Agreement with Ernest Henry Mining, McIvers Transport and Thiess Contractors. The Agreements commit the parties to find trainee and apprenticeship positions for north-west Queensland Indigenous people. The Agreements formalise already existing relationships where the mining companies provide trainee and apprenticeship positions and Koutha arranges for

people to fill them. In the case of McIvers, the Agreement with Koutha builds on the existing commercial joint venture. These Agreements reinforce the commitment to work together. (*Peninsula Post*, 26 Nov, p3)

## **Northern Territory**

### **Jawoyn Association**

An agreement to be signed by the Jawoyn Association, the Northern Land Council and the Northern Territory Government, surrenders native title rights on an area of horticultural land in exchange for renal dialysis facilities and an alcohol detoxification centre to be provided by the Territory. Jawoyn executive director, Robert Lee recognised that the Government should provide these services but said that the people don't want to wait for the slow bureaucracy. (*Aus*, 20 Oct, p1)\* The agreement has been condemned as a national shame and a worrying precedent with Australian Medical Association Vice President, Dr Sandra Hacker, saying it's not proper to barter for health care. Mr Lee said the surrendered land contains no sacred sites and no hunting areas or ceremonial places. (*Age*, 21 Oct, pA9)\* Mr Lee defends the Jawoyn people's decision, saying that they have a right to make decisions in regard to their lands. (*Aus*, 26 Oct, p13)

## **AMENDMENTS**

### **National**

Native Title Representative Bodies feel uncertain about their future after the passing of amendments to the *Native Title Act 1993*. Under the new Act, all 25 of the Representative Bodies will have to reapply for their right to represent native title applicants. Indigenous leaders have expressed concerns over the Minister for Aboriginal Affairs having the power to refuse Representative Body status. (*SMH*, 1 Oct, p2)

Deputy Chair of the National Indigenous Working Group on Native Title, Mr Les Malezer, said that Indigenous leaders have made a decision to fight the new native title legislation using a three-pronged approach. Unworkable aspects of the Act would be fought case-by-case, submissions to international bodies would continue to bring international attention to human rights issues in Australia, and a High Court challenge will focus on a claim that the Government has used its race powers unconstitutionally. (*SMH*, 1 Oct, p2)

The new registration test under the NTA, as amended, is expected to deny many native title applicants the right to negotiate. The Western Australian Government expects that approximately half the number of claims in the State would fail the new test. In New South Wales, seven out of 10 applications are likely to fail the test, while the Cape York Land Council believes that most claims in the far north of Queensland will pass. The National Native Title Tribunal will allow three months for applications to be revised before they apply the new test. (*CT*, 1 Oct, p2)

The National Native Title Tribunal today invited Indigenous people in the Mid West and Gascoyne region to take part in forthcoming briefing sessions on the detail of major changes to Federal native title laws which took effect on 30 September this year.

Tribunal Regional Coordinator Lillian Maher said briefings would be held in Geraldton, Mullewa, Shark Bay, Mount Magnet and Carnarvon over the next few weeks to set out the rights and obligations of native title applicants under the new laws.

She said the briefings were the first in the region of the many information sessions being held by the Tribunal throughout Australia with Indigenous people, peak bodies, pastoralists, miners, local authorities and other groups.

Ms Maher said native title applicants would have to satisfy several important conditions to retain or attract the right to negotiate. These included:

- demonstrating that the application was lodged with the authority of the group or clan from whom the native title rights were derived;
- showing evidence of continuous association with the land; and
- ensuring that none of the applicants had been involved in another application that had already passed the registration test.

General information is available from the Tribunal's Website at: <http://www.nntt.gov.au> (NNTT Media Release, 23 Oct)

NNTT President Justice Robert French, has expressed concern that State-based native title regimes will add to the complexity of native title processes. He says that some governments have not committed to setting up the infrastructure to properly deal with the process. He observes that full commitment to the process and to the making of agreements is often lacking. (Aus, 16 Nov, p3)

### **New South Wales**

The New South Wales Government has, in response to the Commonwealth Government's amendments to the NTA, passed legislation to confirm titles granted over pastoral leases between the proclamation of the NTA and the High Court's *Wik* decision. They have no plans for a State-based tribunal. (WAus, 14 Nov, p11)

### **Victoria**

Yorta Yorta people are concerned that the State Government might introduce native title legislation into Parliament without waiting for the outcome of the Yorta Yorta native title claim that is before the Federal Court. The Court's decision is expected to be handed down sometime in November. The Victorian Government is preparing to introduce legislation that mirrors the Commonwealth Government's NTA. Native title applicants fear that it could impact on their native title rights. (Age, 18 Oct, p12)\*

Hearings for the Yorta Yorta native title case are expected to re-open on 3 November. (Border Mail, 24 Oct, p7)

Victorian Premier, Mr Jeff Kennett, has introduced native title legislation into Parliament. The Land Titles Validation (Amendment) Bill follows the Federal Government's amended native title legislation. (Age, 29 Oct, pA6)\* The Victorian Government has no plans for a State-based tribunal. (WAus, 14 Nov, p11)

### **Queensland**

Queensland Premier, Peter Beattie, has introduced native title legislation to Parliament. Under the proposed legislation, Aboriginal people would lose their right to negotiate over low-impact mining and exploration. Negotiation time on other projects would be restricted to a 12-month timetable, with six months for high-impact exploration. A Land and Resources Tribunal would oversee negotiations. The right to negotiate would remain on pastoral leases, but the effect on the economy must be considered. (Aus, 22 Oct, p4)\*

The Kullilli people plan to challenge the Beattie Government's native title legislation [if passed] in the Federal Court. Spokesperson Steve Hagan, said the legislation's exemption of mineral exploration from the right to negotiate processes could lead to damage or destruction of significant sites. (CM, 26 Oct, p2)\*

Queensland Mining Council members say they have major concerns with the Queensland Government's proposed native title legislation. They have set up a working group to address the new legislation. (CM, 29 Oct, p2)\*

The second part of Queensland's proposed native title legislation has been passed. The Government will now have to decide how to structure the new body that will mediate on mining issues. (CM, 12 Nov, p12)\* The legislation sets out a scale of negotiating rights over mining and exploration tenements. The Government has left responsibility for other parts of the native title process with the federal Tribunal. (WAus, 14 Nov, p11)

The Queensland Mining Council are concerned that State Government handling of native title issues may have caused mining companies to spend exploration dollars elsewhere. The Council cited Australian Bureau of Statistics figures showing that mineral exploration expenditure in Queensland has fallen in the past three years. (CM, 13 Nov, p11)\*

Legislation tabled in State Parliament yesterday aims to set up a new Land and Resources Tribunal. This Tribunal will replace the Mining Wardens Court and integrate mining applications with native title issues. It will also consider cultural heritage matters. (CM, 20 Nov, p4)

### **Western Australia**

The Western Australian Government has introduced legislation that adopts in total, the amendments of the Commonwealth Government's native title legislation. The legislation seeks to establish a State-based regime including Australia's first State-based native title commission, which would take over National Native Title Tribunal responsibilities for Western Australian native title applications. (Aus, 19 Oct, p6)\*

The Western Australian Government has been forced to admit it granted 221 titles to seven different parties without following the procedures of the *Native Title Act 1993*. The titles were granted on the understanding that the parties would provide indemnities. The titles were granted to aid major resource projects. The Opposition claims the Government probably granted the leases illegally. (WA, 30 Oct, p9)\* Kimberley Land Council executive director Peter Yu, said the indemnities would not stand up in court because the Government had acted illegally. This could leave the State open to massive compensation payments. (WA, 31 Oct, p26)\*

Western Australian legislation validating more than 9000 land and mining titles has been passed by the Legislative Assembly. The Government cut short the debate on the Bill and forced a vote. The Bill was supported by both the Government and the Opposition. (WA, 13 Nov, p6)\*

The Western Australian Government has amended its native title legislation in response to Commonwealth Government concerns about whether the legislation would fit within the Commonwealth's framework. Premier Richard Court, said that most of the 61 amendments were minor and technical. He named the two substantial changes as the inclusion of the

statutory right to judicial review over decisions made by the State-based commission and measures to protect the independence of the commissioner. (*Aus, 20 Nov, p6*)\*

### **Northern Territory**

The Northern Territory has passed validation legislation in accord with Commonwealth amendments to the NTA. They have also passed legislation to change the right-to-negotiate regime to a right to consultation and to establish a Lands and Mining Tribunal to administer this. Mediation of claims is being left to the NNTT. (*WAus, 14 Nov, p11*)

## **GENERAL NATIVE TITLE ISSUES**

### **International**

A delegation of officials involved in the negotiation of the Nisgaa Agreement in British Columbia, will visit Canberra as part of a world tour to explain the treaty. The Nisgaa have just ratified the treaty, which is now expected to pass through the British Columbian and Federal Parliaments. The treaty delivers the Nisgaa people around eight per cent of Crown land, self-government and about \$C500 million in compensation. (*FinR, 12 Nov, p16*)

A delegation of Aboriginal people from the Kimberley region of Western Australia have talked to British diplomats and MPs because they are concerned that the NTA, as amended, will adversely affect Indigenous peoples in Australia. They are in Europe for a United Nations debate over the draft Declaration on the Rights of Indigenous Peoples. Spokesperson, Kumanjayi Yu, said that he had been informed through a briefing by the Department of Foreign Affairs and Trade, that the Australian commitment to Article 3 of the draft declaration, which relates to self-determination for Indigenous people, has changed. This follows a Cabinet resolution that repeals the commitment to self-determination for Indigenous people in Australia and elsewhere. (*CT, 29 Nov, p2*)\*

### **National**

ATSIC Chair, Gatjil Djerrkura, says reconciliation will not be possible before land rights issues are resolved fairly. (*WA, 22 Oct, p26*)

Australian Local Government Association delegates gathered for an Indigenous issues briefing ahead of the National General Assembly of Local Government. Delegates discussed issues relating to planning, coordination and delivery of services to Indigenous communities. Association President, Cr John Campbell, said that local government has been leading the way in seeking to bring about an understanding of native title in local communities with a program that centred on developing local agreements. (*ALGA Media Release, 8 Nov, p1*)

The Commonwealth Attorney-General, Mr Daryl Williams, is now responsible for native title policy. He is taking over from Senator Nick Minchin, who was responsible for native title during the development and passage of the recent amendments to the NTA. (*Attorney-General Media Release, 26 Nov*)

The Second World Indigenous Peoples Pathways conference is being held in Toowoomba. Speakers at the conference come from all over the world and include West Indian Viv Richards, a personal envoy from President Nelson Mandela, Makhenkesi Stofile, president of Eastern Cape, Senator Margaret Reynolds, Murrandoo Yanner and Samora and Humelo Biko, sons of South African freedom fighter Steve Biko. Participants are here to discuss issues of

reconciliation, multiculturalism, land rights, health and education among other things. (CM, 30 Nov, p2)

### Victoria

A sign acknowledging prior Aboriginal ownership of freehold land, has been erected at a farm at Wando, Victoria. The property owners, Paul and Cathie Haw, see the sign as grassroots action towards reconciliation. The sign says; 'We are proud to acknowledge the Dja Dja Wrung people as the traditional owners of this land'. They hope this sign will be the first of many similar signs to be erected across Australia. (Weekly Times, 4 Nov, p35)

### Queensland

A conference will be held in Cairns to discuss native title issues. The conference is aimed at raising awareness about possible effects on the sugarcane industry. (Herbert River Express, 10 Nov, p2)\*

### Tasmania

The Tasmanian Government has called for submissions about what it should do with Crown land on Flinders Island. Legal Manager for the Tasmanian Aboriginal Centre, Michael Mansell, says that the Aboriginal community were hoping for the return of significant areas of Crown land. He believes that Government moves to sell off this land will jeopardise reconciliation. (Examiner, 21 Oct, p30)\*

## RECENT PUBLICATIONS (Not AIATSIS Publications)

### *Talking Common Ground*

Rural Landholders for Coexistence (RLC) have published a guide to making agreements called *Talking Common Ground*. Speaking at the launch, Justice French said the first important step in any lasting agreement was getting the relationship right. Justice French said he was confident the guide would become a useful resource for landholders who want to negotiate coexistence arrangements with their Aboriginal neighbours.

Towards Common Ground includes a case study of the agreement between pastoralists and the Western (Sunset) Yalanji people on Karma Waters Station, the first formal recognition of native title on a pastoral property. This agreement involved a pastoralist and Indigenous people drawing up detailed arrangements to recognise and respect both their interests in land. (NNTT Media Release, 17 Nov)\*

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

**Summary:** At a Canberra workshop entitled 'Native title workshop for anthropological practitioners', it was suggested that a practical working guide to the anthropologist's role in the registration test process be written and circulated. The manual is intended to help anthropologists preparing claims for Native Title Representative Bodies with the necessary knowledge and background to meet claim registration.

The manual is available from ATSIC in Canberra and is on their website at:

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

### Film

*About Us: Walking With My Sisters*, SBS Television

A documentary focusing on three sisters from the Arakwal people and their fight to have their native title recognised through the processes of the NTA. (Age, 14 Oct, pA27)

## 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 1996, 1997 and 1998:**

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

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

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

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

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

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

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

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

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

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

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

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

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

- No. 22: *'Beliefs, Feelings and Justice' Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples' Rights in Canada* by Lisa Strelein
- No. 23: *'This Earth has an Aboriginal Culture Inside' Recognising the Cultural Value of Country* by Kado Muir
- No. 24: *The Origin of the Protection of Aboriginal Rights in South Australian Pastoral Leases* by Robert Foster
- No. 25: *Compulsory Acquisition and the Right to Negotiate* by Neil Löfgren
- No. 26: *Engineering Unworkability: The Western Australian State Government and the Right to Negotiate* by Anne De Soyza

**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

Other Publications include:

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

Our email address is: [ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au)

*This newsletter was prepared by Penelope Moore*