# A I A T S I S

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

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# NATIVE TITLE NEWSLETTER


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## NATIVE TITLE IN THE NEWS June - July 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
*Fin R* = Financial Review
*HS* = Herald Sun (VIC)
*KM* = Kalgoorlie Miner
*LE* = Launceston Examiner
*Mer* = Hobart Mercury
*NTN* = Northern Territory News
*Rep* = The Republican
*SC* = Sunshine Coast Sunday
*SMH* = Sydney Morning Herald
*Tel M* = Telegraph Mirror (NSW)
*WA* = West Australian
*WAus* = Weekend Australian

## THE NATIVE TITLE RESEARCH UNIT

The Native Title Research Unit identifies pressing research needs arising from the recognition of native title, conducts relevant research projects to address these needs, and disseminates the results. In particular, we publish a regular newsletter, an Issues Papers series and publications arising from research projects. The NTRU organise and participate in conferences, seminars and workshops on native title and social justice matters. We aim to maintain research links with others working in the field.

The NTRU also fields requests for library searches and materials from the AIATSIS collections for clients involved in native title claims and assists the Institute Library in maintaining collections on native title.

The NTRU has been instrumental in organising the Institute's second Seminar Series for 1998. The series is titled *Land, Rights, Law: Issues of Native Title.* A list of speakers and dates is included at the back of this newsletter.

# CLAIMS

## Queensland

### Wulgurukaba People No.1 and No.2 [NNTT Ref#QC98/30, QC98/31]

The Gabulbarra Reference Group has lodged two native title claims over areas of Magnetic Island. The Reference Group is acting for the Wulgurukaba people of Townsville and the Manbarra people of Palm Island who are claiming the right to use, manage and enjoy the land in accordance with their laws. The first claim covers the national park and the Horseshoe Lagoon Environmental Park, while the second claim covers state land used as a buffer zone between the towns and the national park. Leasehold and freehold land as well as government land such as reserves for schools, fire and police stations, are excluded from the claims. Beaches and reefs, including the Nelly Bay project site, are also excluded. Townsville Mayor, Tony Mooney, said he has no information on the claim and would be seeking discussions with the major stakeholders on Magnetic Island. *(CM, 30 June, p6)*

### Fraser Island

The Dalungbara, Batchala and Ngulungbara people of Kgarl have sought recognition of common law native title to lands and seas in the Fraser Island region. The State Government has applied to the Supreme Court to strike out the claim on the basis that it was hopeless and frivolous because the applicants could not prove a contemporary connection with the land. The claimants argued they were hampered in proving such a connection because of state policy that scattered their people throughout the state. The application has been adjourned to a later date. *(CM, 24 July, p6)*

### Griffith University

An agreement arising out of a native title claim was signed yesterday. The agreement between Griffith University and traditional owners of its Gold Coast campus land, will see important aspects of Kombumerri culture incorporated into the University. The Kombumerri people will not oppose the transfer of land from the Queensland Government to the University and in return, Griffith agrees to the acknowledgement of traditional owners through naming of facilities, inclusion of Kombumerri history and culture in the curriculum and scholarships for Indigenous students. The University has also agreed to survey the flora and fauna as well as sites of significance in the area. The implementation of the agreement will be overseen by a steering committee. *(Aus, 29 July, p34)*

## South Australia

### Dieri Mitha [NNTT Ref#SC95/2]

The application by the Dieri Mitha people, lodged in 1995, has been referred to the Federal Court for resolution. National Native Title Tribunal registrar, Chris Doepel, said the Tribunal had tried to help mediate an agreement between various parties but had failed. *(Ad, 4 June, p14)*

### Kuyani no.2 [NNTT Ref#SC95/4]

The mediation conference for the Kuyani no.2 application, covering 151,000 square kilometres stretching from Whyalla, South Australia, towards the New South Wales border, north to Marree and west to Woomera, is to be conducted in Port Augusta from 13-15 July. It will be one of Australia's largest mediation conferences on a native title application.

National Native Title Tribunal Member Fred Chaney, who was to chair the mediation, said more than 880 people or groups had registered an interest in taking part in the mediation. Mr Chaney said the meeting would be an opportunity for the Indigenous applicants and the other parties, including miners, pastoralists, fishers and local authorities, to discuss the application, set out their points of concern, and decide how to progress negotiations. *(NNTT Media Release, 13 July, p1)**

## Western Australia

### Ngaanyatjarra Claims

The Ngaanyatjarra Land Council have 10 claims lodged with the National Native Title Tribunal. The Western Australian Government had plans to return a 250,000 square kilometre block of Aboriginal reserve and crown land to the Council, merging the 10 claims into one, but the Government has since decided to negotiate each claim individually. The Ngaanyatjarra people have expressed anger at repeated Government demands for proof of ownership of the land and at their insistence that none of the land belongs to the Ngaanyatjarra people. Because of these problems, negotiations with governments have stalled. *(WA, 4 June, p38)*

### The Ngaanyatjarra People and the Spinifex People

An agreement has been signed between Ngaanyatjarra people and Spinifex people. The Ngannyatjarra people have agreed to surrender the southern-most section of one Aboriginal reserve over which the council holds lease when the Spinifex people get tenure at least as strong as the Aboriginal reserve. *(WA, 4 June, p38)*

### Central Goldfields

Four native title applications by the Karonie people, an application by the Murdeeu group, and another by the Mingarwee people were today referred to the Federal Court for resolution. Tribunal Registrar, Chris Doepel, said the claims had failed to satisfactorily progress in mediation. *(NNTT Media Release, 4 June, p1)*

### Rottnest Island [NNTT Ref#WC96/47]

The National Native Title Tribunal has formally rejected a native title application over Rottnest Island and three nautical miles of sea around it. Mr Corrie Bodney lodged the application on 9 May 1996. Tribunal Registrar, Chris Doepel, said under section 169 of the *Native Title Act 1993,* the applicants could appeal the decision to the Federal Court within 28 days. *(NNTT Media Release, 5 June, p1)*

### Rockingham – Bunbury [NNTT Ref#WC96/90]

The National Native Title Tribunal has formally rejected a native title application over 36,000 square kilometres, stretching from Rockingham to Bunbury. Mr Allan Kickett lodged the application on 12 August 1996. Tribunal Registrar, Chris Doepel, said the application was rejected on the grounds that on the face of it, it could not succeed. He said the application did not set out an identifiable community from which the native title rights were derived and did not set out specific native title rights that the applicants were seeking to enjoy. *(NNTT Media Release, 15 June, p1)**

### Ngyullee Ba Marbithar Boogoolaba Nyinnargoo [NNTTRef#WC98/19]

The National Native Title Tribunal has been verbally advised that Australia's largest native title application will be withdrawn. The application, covering 469,000 square kilometres and centred on Western Australia's Goldfields, was lodged on 7 April 1998. *(NNTT Media Release, 18 June, p1)** A spokesperson for the claimants, Mr Brian Wyatt, said the decision followed negotiations with other native title groups in the area. *(FinR, 19 June, p22)**

## Southern Goldfields

Overlaps in four native title applications in the southern Goldfields region have been eliminated following extensive mediation assisted by the National Native Title Tribunal. The Tribunal has approved amendments to three applications by groups of Ngadju people. The amendments involved Indigenous applicants redrawing boundaries to eliminate overlaps. In addition, Kalaako applicants have agreed to withdraw their boundary from overlapping the Ngadju applications. Tribunal Member Tony Lee, who presided over the mediation, said that by combining their efforts and addressing the issue of overlaps, the Ngadju people are now in a much better position to engage in constructive negotiations with other parties, such as pastoral lease holders and local governments. *(NNTT Media Release, 19 June, p1)*

## North-East Goldfields

Negotiations have resulted in the withdrawal or amendment of seven applications to reduce overlaps. The Milangka/Farmer application and a Goolburthurnoo Waljen application were withdrawn. The Youndou, Milangka Purungu and another Goolburthurnoo Waljen application, have been reduced in size. The two oldest Waljen applications were amended so they now represented a larger number of the Waljen people. *(NNTT Media Release, 19 June, p1)*

## Gascoyne Region

The National Native Title Tribunal has referred four Gascoyne region native title applications to the Federal Court for resolution. The four applications by the Nganawongka, Wadjari and Ngarla people – north of Meekatharra – had reached a deadlock in negotiation over a process for the provision of anthropological research information. *(NNTT Media Release, 23 June, p1)**

## Koara Determination, Eastern Goldfields [NNTT Ref#WF96/1, WF96/5, WF96/11]

The National Native Title Tribunal has given the go ahead for seven mining leases to be issued by the State Government in an area that was the subject of a native title application by the Koara people. The Tribunal has approved the granting of the leases, all of which were north of Leonora in the eastern Goldfields, with conditions to protect the native title rights and interests of the Koara people. The conditions were designed to protect native title rights and interests for the period of the leases, which are granted for 21 years with a renewal option of 21 years. The 16 conditions set by the Tribunal include:

- that the Koara people's access to the land covered by the mining leases be maintained;
- that sites of particular cultural significance are protected;
- that in the event of a mining development being proposed, a social impact study be conducted;
- that the Koara people be given employment and training opportunities where possible; and
- that the mining operators undertake training to raise their awareness of the Koara people's culture. *(NNTT Media Release, 24 June, p1&2)*

### The Koara Determination

The Koara determination is the culmination of two years of arbitration under s.38 of the *Native Title Act.*

A decision of the National Native Title Tribunal (NNTT) in 1996, determined that the State party may grant mining tenements to the grantees subject to conditions.

The conditions were:

- that the native title party enjoy access to land that is the subject of the mining leases, except where mining operations may cause safety and security concerns;
- the grantee party was obliged to conduct site surveys and to involve the native title party to avoid site damage; and
- the parties were to negotiate benefits to the native title party under a two stage process when a productive mine was proposed.

The Tribunal did not decide on compensation payable to the native title party.

The native title party appealed this determination on the basis that NNTT erred in law. The two major arguments were:

1. That the NNTT erred in law in concluding it had no power on a future act determination to determine compensation be paid other than in accordance with Division 5.
2. That the NNTT can not set a two stage negotiation process to separate mining from exploration.

The Federal Court found the NNTT had erred in law on the following points:

1. It could in fact determine compensation be held in trust when there is no registered native title party.
2. The NNTT must not leave outstanding issues unresolved.

The matter was referred back to the NNTT for a determination. The NNTT heard argument and took further evidence. In June 1998, the Tribunal decision found that the mining leases may be granted subject to conditions [see above, p4]. Some of the conditions were made conditions on the mining lease, which means that if the company breaches those conditions then the lease can be forfeited.

Again, the NNTT did not decide on compensation.

The mining tenements affected by the decision were not for productive mines, rather the grantees who held exploration licenses were required by statute to apply for mining leases or lose their title to the land. In arbitration, the argument focused on criteria in s.39 of the *Native Title Act*. It was a question whether s.39 criteria can be applied where no productive mining is intended. The native title party argued that a worst case scenario must be contemplated, whereby a Western Australian mining lease can be granted for 21 years and is renewable for a further 21 years. In effect native title parties would lose their land for up to 42 years. The worst case scenario was not considered by the NNTT. The final conditions set by the decision, attempted to overcome the difficulties posed for this situation by the *Western Australian Mining Act* and overlapping claims. It set out some interesting options for dealing with non-productive mining leases and for how parties should interact should a productive mine be discovered.

The determination occurred under the previous *Native Title Act*. It is still unclear how the amendments affect future decisions of this nature.

At the time of writing the grantee party had requested an extension of the period for appeal.

*Kado Muir, Visiting Research Fellow, NTRU. 31/7/98*

### Spinifex People [NNTT Ref#WC95/51]

The Spinifex people have entered into a framework agreement with the Western Australian Government, which was signed today at Mirramiratjara after two years of intensive negotiations. The agreement, which is underpinned by the recognition of traditional Aboriginal ownership of lands, relates to a 50,000 square kilometre area of desert country abutting the South Australian border south east of Warburton. The area included an Aboriginal reserve, a nature reserve and vacant Crown land and had no current pastoral or mining leases, although there was exploration interest in the area.

The framework agreement set out substantive issues for further negotiation including providing the Spinifex people with a permanent and secure form of land tenure, and involving the Spinifex people in environmental management and economic development. *(NNTT Media Release, 1 July, p1)**

### Warrarn No.1 and No.4 [NNTT Ref#WC95/61, WC95/64]

The National Native Title Tribunal has referred two Pilbara region native title applications to the Federal Court for resolution. The two Warrarn applications over Streeley and Coongan stations, 50km south east of Port Hedland, failed to satisfactorily progress in mediation. The applications overlapped with others in the region. Efforts to bring about a consolidation of the applications were unsuccessful. *(NNTT Media Release, 2 July, p1)**

### Neil Albert Phillips [NNTT Ref#WC97/5]

The National Native Title Tribunal has formally rejected a native title application stretching from Guiderton to Southern Cross, and south to Corrigin. The application, by Mr Neil Phillips on behalf of Pandawn descendants, was lodged on 28 January 1997 over an area of more than 41,000 square kilometres. Tribunal Registrar, Mr Chris Doepel, said that the material supplied by the applicant did not identify a community of Indigenous people who are the native title holders and from whom the applicants are descended. *(NNTT Media Release, 3 July, p1)*

### Kanana [NNTT Ref#WC97/6]

The National Native Title Tribunal has rejected the Kanana application, lodged on 28 January 1997 by the Smith family. The application covered the South West Shire of Boyup Brook. It was rejected because, on the face of it, it could not succeed. Tribunal Registrar, Mr Doepel, said that the material supplied by the applicants did not establish a continuous connection with the area. He said that the application also seeks a determination of exclusive possession, but such an application could not succeed because native title cannot override the validly granted rights and interests of others. *(NNTT Media Release, 8 July, p1)*

### Wiljen [NNTT Ref#WC95/84]

The Federal Court has struck out the claim lodged on behalf of the Wiljen people over land from Balladonia to Walpole. The National Native Title Tribunal referred the claim to the Federal Court in March last year, after mediation between parties broke down. *(WA, 10 July, p6)*

### Rubibi No.6 and Leregon (Lanaganjun) Clan. [NNTT Ref#WC95/28, WC95/43]

The National Native Title Tribunal has referred two overlapping native title applications to the Federal Court for resolution. The applications were over seven square kilometres at Fishermen's Bend near the Broome townsite. The Kimberley Land Council, on behalf of Yawuru traditional owners, lodged the first application on 28 July 1995. Mr Jack Lee lodged the second application on 10 August 1995 on behalf of the Leregon clan of the Yawuru people. Registrar Chris Doepel said long term efforts to mediate between the Indigenous

parties about the overlap had been unsuccessful, leaving the Tribunal with no option but to refer the matter to the Federal Court. Mr Doepel said the State Government had written to the Tribunal in January requesting that the matter be referred to the Federal Court. *(NNTT Media Release, 15 July, p1)*

### Maduwongga people

The Maduwongga people from the Goldfields region have failed to stop the National Native Title Tribunal from giving the State Government the go-ahead to develop land near Kalgoorlie-Boulder subject to native title claims. The Federal Court said the grounds of the appeal did not establish any error of law. *(WA, 25 July, p43)*

### Karratha

The State Government has withdrawn from native title negotiations with claimants represented by the Nanga Ngoona Moora Joorga Land Council, over land in the Karratha suburb of Baynton. The Roebourne Shire Council is expecting an influx of 10,000 workers in the Karratha area and fears it will run out of residential land. Shire chief executive, Trevor Ruland said they had thought negotiations were close to settlement and expressed surprise at the Government's decision to pull out of talks. According to Lands Minister, Doug Shave, talks had failed to bring an agreement that would enable the release of land in the short term, prompting the Department of Land Administration to withdraw. *(WA, 27 July, p28)*

## ACT

### Ngunawal [NNTT Ref#AC98/1]

The National Native Title Tribunal has rejected a native title application over Parliament House and the High Court. The application was lodged by on behalf of the Ngunawal people in March. Tribunal Registrar, Chris Doepel, said that the application was rejected because, on the face of it, it could not be made out. He said the construction of major public works on this land was inconsistent with the survival of native title rights and interests which can be recognised in common law. *(CT, 8 July, p3)**

### Ngunnawal [NNTT Ref#AC96/2], Ngunawal [NNTT Ref#AC97/1]

Possible management options for Namadgi National Park under native title have been discussed in a report commissioned by the National Parks Association of the ACT. Aboriginal land claims consultant, Dermot Smyth, reports that there is a strong case for the development of joint management with native title holders that do not require them to lease their land to the government. The report considered management arrangements already held in other parks, including Kakadu and Uluru. *(Valley View, 21 July, p6)*

## Northern Territory

### Croker Island [NNTT Ref#DC94/6]

Justice Howard Olney decided to bring forward his judgment in the Croker Island case from October until Monday 6 July. This decision means that Justice Olney's findings can be taken into account in the Government's proposed native title amendment legislation. *(SMH, 4 July, p9)**

Justice Olney found that native title rights could exist over areas of sea and the sea-bed but that those rights were not exclusive. The claim, heard in the Federal Court, covered seas surrounding Croker Island, about 250 km north-east of Darwin, and some islands off the coast of Arnhem Land. *(SMH, 7 July, p5)**

## Mary Yarmirr & Ors v The Northern Territory of Australia & Ors

- The applicants in the Croker Island Case are island people from the Mandilarri-Ildugij, Mangalara, Murran, Gadura, Minaga, Ngaynjaharr and Mayarram peoples who have a strong, historical and ongoing relationship to the islands in question and the surrounding waters.
- Unlike the plaintiffs in *Mabo (No. 2),* the applicants claim relates to the sea and the sea-bed surrounding the islands and not to the islands themselves. The application was brought under the *Native Title Act 1993* for a determination recognising the existence of native title interests. The interests claimed include rights over resources and the right to protect places of cultural importance. The Croker Island decision is particularly significant because it marks the first time a court has ruled on the existence of native title rights and interests in relation to offshore waters.
- Justice Olney of the Federal Court has proposed a determination that recognises the non-exclusive rights of claimants to travel through the claimed area, to fish and gather so as to satisfy their personal and communal needs (but not for commercial purposes), and to visit and protect places of particular cultural or spiritual significance. Fishing may be carried out by the applicants without the need for a license to be obtained where it otherwise may be required.
- The applicants did not satisfy the court that native title rights existed over the subsoil, including minerals such as petroleum under the sea-bed. They also failed to establish a right to the exclusive use of the waters within the area claimed. The Court will reconvene on 12 August 1998 to finalise the determination and any other related matters.
- Olney J examined the requirements of section 223 of the *Native Title Act 1993*, which stipulates that the native title rights must be rights and interests that are capable of being identified as common law rights. Olney J rejected the idea that native title was restricted to the territorial limits of the Northern Territory, finding that the common law had been extended over the relevant waters by the *Native Title Act 1993*.
- Olney J described, if it was subsequently found by superior court that native title stopped at the territorial limits of the Northern Territory, how the territorial limits of the Northern Territory should be determined. Olney J found that the territorial limits of the Northern Territory extended to the low water mark of the coast-line of the islands and the mainland.
- The decision addresses issues peculiar to the making of claimant applications over offshore waters including:
  - how the seaward boundary of a claimant application could be determined; and
  - how Commonwealth, State and Territory legislation (such as fisheries legislation) could impair, recognise or affect Indigenous rights.
- The decision raises several questions as to the effect of a native title right upon the exploitation of marine resources, and the effect of the right to protect areas of cultural or spiritual significance upon fishing and mineral exploration.

*Howard Allen, 14/7/98*

Northern Land Council lawyer, Ron Levy, said that while the Croker Island decision was for non-exclusive native title rights and interests, traditional owners could enter into meaningful negotiations with others who have interest in use of the sea and its resources. *(NT, 7 July, p7)*

Chair of the Australian Seafood Industry Council, Mr Nigel Scullion, indicated that the question of exclusive possession of native title rights over water is still uncertain after the Croker Island decision. *(FinR, 21July, p14)*

### Antarctica

The Wiljen people have proposed to lodge a native title application over Antarctica. National Native Title Tribunal president, Justice Robert French, said the Tribunal would not accept the proposed application and that it is plainly frivolous and vexatious. He said such an application trivialises the deeply felt aspirations of Indigenous people genuinely seeking recognition of their traditional lands. *(NNTT Media Release, 24 July, p1)**

## MINING AND NATURAL RESOURCES

### National

Gas industry legal advisers say that the passage of the NTA Bill has removed an impediment to the development of gas pipelines. The amendments allow pipelines for public and private use to be developed without the right to negotiate applying. Developers are now required to consult with Indigenous groups who have claims over the area, as opposed to the provisions under the *Native Title Act* that allowed for notice of intention and a negotiation process. Mr van Hatten, partner of Freehill Hollingdale and Page, says that the primary issue for pipeline projects will now be Aboriginal heritage, rather than native title. *(FinR, 29 July, p31)*

### New South Wales

#### Timbarra Gold Project – Ross Mining

Families from the Timbarra Bandjalung people have threatened Ross Mining with damages and compensation action over its Timbarra gold project in northern NSW. The families say they represent 100 traditional owners of the land who have been left out of negotiations between the NSW Government, Ross Mining and the NSW Aboriginal Land Council that lead to the issuing of a mining lease through the section 29 process of the *Native Title Act*. *(CM, 22 June, p21)*

### Queensland

#### Century Zinc Mine

The Carpentaria Land Council was granted a Federal Court injunction against the Burke Shire Council and the Century Zinc Mine's developers. The court ruled that work on a bridge over the Gregory River should stop because negotiations had not been held with Aboriginal leaders. Justice Bryan Beaumont said the council was in breach of the *Native Title (Queensland) Act* because it had failed to properly notify possible native title holders of its willingness to negotiate over the proposed acquisition of the land. *(CM, 4 June, pH2)**

Due to inconclusive state election results, the Federal Court yesterday extended the time in which Burke Shire Council can indicate willingness to negotiate in good faith with the Carpentaria Land Council. Justice Beaumont said if there was no undertaking, developers and the council would be restrained from further work on the bridge. *(CM, 23 June, p6)*

### South Australia

#### Lambina Agreement

A native title mining agreement between traditional owners and the South Australian Opal Miners Association has been signed. The agreement will allow opal mining in the Lambina area, about 230km north of Coober Pedy. Conditions of the agreement include protecting

traditional sites and waterholes and the rehabilitation of mined land. President of the Miners Association, Neville Hyatt, says all miners taking up claims in the area must do so under the terms of the agreement, which is expected to be ratified by the South Australian Government this week. *(DT, 15 June, p66)**

The South Australian Government is yet to endorse the agreement. Miners and Indigenous owners have accused the Government of delaying the development of the opal field. A Government spokesperson, Mr Kerin, said the Minister was examining the Lambina Agreement, which has 'some complications', and that the department is seeking legal advice on the agreement. *(Ad, 27 June, p43)*

### Pitjantjatjara Land

Delta Gold has formed a joint venture with Rio Tinto to expand a program of exploration for mineral wealth in Pitjantjatjara lands, north-west South Australia. The companies plan to target nickel, copper and platinum. Mr Greg Borchers of the Pitjantjatjara Council, says the Aboriginal community are likely to accept the partnership. Rio Tinto is also negotiating access to two exploration areas in the eastern part of the Pitjantjatjara lands. *(Ad, 29 July, p32)*

## Western Australia

The acting director-general of the WA Minerals and Energy Department, Colin Branch, has told a budget estimates committee that, following the High Court's *Wik* decision, applications for exploration and prospecting licences in areas subject to native title claims have been subject to more objections. Mr Branch, who is also chair of the Minerals and Energy Research Institute, said native title claims would prevent mineral exploration across 10 per cent of WA by the year 2000. *(WA, 2 June, p6)*

### Kimberley – Fitzroy River

In August 1997, the Western Australian Government made an in-principle decision to support a proposal to dam the Fitzroy River for agricultural purposes. An agreement was made with Western Agricultural Industries P/L (WAI) to assess the proposal. If the dam goes ahead, Aboriginal communities have much at stake including:

- important sites in Diamond Gorge;
- the right to fish; and
- the right to own and occupy traditional lands.

The Federal Government's NTA Bill, if passed, would enable upgrading of pastoral lease holdings for irrigated agriculture and the construction of dams and other infrastructure – without reference to traditional owners. *(CT, 18 June, p7)*

### North-East Goldfields, Murrin Murrin

Anaconda Nickel Limited, which is building a large nickel mine and processing facility near Leonora, has announced an employment agreement with local Aboriginal communities. Anaconda has committed to employ 115 local Aboriginal people to work on the processing facility at Murrin Murrin. Anaconda is seeking Federal Government assistance to fund a training program over the next four years. *(Anaconda Nickel Media Release, 3 June, p1)*

### Yandicoogina

After the March 1997 land-use agreement between Hamersley and the Gumala Aboriginal corporation (GAC), three self-sustaining businesses have been set up. The businesses provide services such as catering, equipment hire and earthmoving and provide employment for local Banjima, Niapaili and Innawonga people. *(Aus, 6 July, p33)**

### Northern Territory

Ashton Mining – Merlin project

Diamond production is due to start early next year on Ashton Mining's Merlin project after development consent was gained from native title claimants. The Wurdaliya and Wuyaliya landholdings groups consented to the Northern Territory Government's grant of the mining leases. Ashton and partner Aberfoyle Resources, have agreed to provide employment and training opportunities, to protect sacred sites and to pay compensation for disturbance of native title. *(Aus,17 June, p30)**

## AMENDMENTS

### National

ATSIC has stopped funding the National Indigenous Working Group who were responsible for devising its response and strategy in relation to the proposed amendments to the *Native Title Act*. Aboriginal Affairs Minister John Herron, according to senior Indigenous sources, had been under pressure by other ministers to prevent the Working Group staying active during a Federal election. The Working Group officially left its premises on Friday, but continues to run with the help of volunteers. *(CT, 2 June, p3)**

After the One Nation Party polled strongly in the lead-up to the Queensland election, Independent Senator Brian Harradine indicated he was prepared to compromise on the Government's Native Title Amendment Bill, including the Government's demand for a tough threshold test, in order to avoid a double dissolution election over race. He is also prepared to negotiate on other Government sticking points such as the sunset clause and the issue of subjecting the NTA Bill to the Racial Discrimination Act. (*SMH, 5 June, p1)**

The Prime Minister rejected Senator Harradine's offer to negotiate on the Government's NTA Bill, saying a double dissolution election on *Wik* would only be avoided if the Senate passes the NTA Bill unamended. *(SMH, 6 June, p5)**

The Federal Government added to speculation that a double dissolution is looming by setting a deadline of only weeks for compromise to be found on their NTA Bill. *(CT, 8 June, p3)*

The Prime Minister, Mr John Howard, said further compromise on the Government's NTA Bill would assist Pauline Hanson's One Nation party and would be a tactical mistake. *(FinR, 11 June, p8)**

Federal Cabinet has endorsed a decision to hold a double-dissolution election as early as August if the NTA Bill is not passed in the Senate within 16 days. *(Age, 17 June, pA1)**

The Prime Minister, John Howard, has dulled hopes of a compromise on the Governments' proposed amendments, indicating that there is still a 'fair gap' between these and Senator Harradine's proposal. The Government rejects Indigenous claims to a legally enforceable right to negotiate on pastoral leases. Senator Harradine is willing to compromise on this, and has suggested that that the Indigenous right to negotiate be limited to significant heritage sites. *(Aus, 23 June, p2)**

The Federal Government has negotiated a deal with Senator Harradine so that the NTA Bill can be passed in the Senate. The Government is consulting with State Governments and

farming and mining stakeholders to iron out technical and legal concerns they may have, without jeopardising the deal. Aboriginal leaders condemned the negotiation process, saying they were shut out of the talks. *(FinR, 1 July, p5)*

ATSIC Chair, Mr Gatjil Djerrkura, has indicated his concern and dissatisfaction with the fact that Indigenous Australians were specifically excluded from the process of negotiation about their rights through the NTA Bill, while miners, farmers, states and territories were all consulted. *(ATSIC Media Release, 1 July, p1)**

Under the agreement:

- The right to negotiate for developments on pastoral leases and in towns and cities is replaced with procedural rights of consultation and mediation to protect significant Aboriginal heritage sites.
- The sunset clause, which put a six-year limit on the lodging of claims under the *Native Title Act*, is dropped.
- The *Native Title Act* will be read and construed subject to the *Racial Discrimination Act*. There is however, no direct reference to making the whole Act subject to the RDA.
- The threshold test stays tough as in previous Government proposed amendments, although the test extends to include, in some cases, claimants whose parents had a physical connection to the land, but were themselves locked out from properties or prevented from being on the land by Government policy. Such claimants will be able to ask the Federal Court to endorse their rights to lodge applications.
- State based bodies will determine claims and allow for mediation. If the decision is against native title claimants/holders, it can be reviewed by relevant State ministers. *(SMH, 1 July, p1) (Aus, 2 July, p4) (FinR, 2 July, p1&2) (WA, 2 July, p4)**

The National Indigenous Working Group is considering a constitutional challenge to the latest NTA Bill. The challenge would centre on the Government's use of its race powers. Working Group member, Mr Aden Ridgeway, said lawyers were prepared to work free of charge on a High Court case. If the challenge failed, Indigenous people could then take their case to an international court. *(SMH, 3 July, p6)*

Mining and farming groups have endorsed the compromise deal on the NTA Bill, saying that it would end years of uncertainty and produce a stable investment climate. *(FinR, 3 July, p3)**

Deputy Leader of the Opposition, Mr Gareth Evans, has said that if the NTA Bill passed through Parliament, a Labor government would amend the legislation after consultation with all stakeholders. *(FinR, 6 July, p3)*

The redrafted NTA Bill was passed through the House of Representatives on 3 July 1998. *(WA, 4 July, p4)**

The Labor Party has amended its promise to hold a round-table meeting on the NTA Bill if elected to Government. They now say that such discussion would occur when the re-negotiated Bill collapses from constitutional and other legal challenges. *(FinR, 4 July, p3)*

Chief Minister of the Northern Territory, Mr Shane Stone, said yesterday that mining, land development and the Alice Springs to Darwin railway would be the big winners from the

compromise deal over the NTA Bill. He said that changes to the NTA would allow the Government to acquire those pastoral leases under native title claim along the rail corridor that came under the NTA. *(NTN, 5 July, p4)*

ATSIC has released their analysis of the Howard/Harradine agreement over the NTA Bill. ATSIC Chair, Gatjil Djerrkura, released the analysis on the eve of the Senate's consideration of the NTA Bill to assist an informed debate in the Parliament. The analysis considers the Bill as a whole, including the four newly negotiated 'sticking points', in recognition that the overall amendments impact significantly on the native title of Indigenous people. *(ATSIC Media Release, 5 July, p1, 2)**

### ATSIC on the Howard/Harradine compromise

**1. Racial Discrimination Act (RDA) Amendment**
The proposed amendment to the RDA means that State/Territory native title regimes must operate in a non-discriminatory way and any ambiguous terms in the NTA are to be interpreted in light of the RDA. This clarifies the operation of the current provision and is a minor improvement. The amendment does not leave any scope for challenging the provisions of the NTA as amended on the ground of inconsistency with the RDA. This means that a clear provision of the NTA will override protection available under the RDA, and will permit State and Territory laws to have a similar effect.

**2. Registration test**
The registration test will apply to claimants who wish to use the Right to Negotiate. The Government's 'traditional physical connection' test is maintained with the Howard/Harradine agreement providing for an exception to the test when physical connection cannot be established because a parent was removed from their traditional country. But where the connection of a parent is relied on, registration can only be by a court order which would be difficult to achieve within the time provided under s.29 that the Government intends to issue a mining lease or compulsorily acquire land.

**3. Sunset clause**
The Government has agreed to abandon the sunset clauses. This is a significant improvement.

**4. Right to Negotiate (RTN)**
Under the NTA the RTN applies to exploration and mining, and to all compulsory acquisitions of native title for the benefit of a third party. Under the alternative scheme the RTN will likely only apply to mining, i.e. if the Commonwealth Minister considers State laws allow adequate consultation before exploration; and only to some compulsory acquisitions for the benefit of a third party.

The main differences to the Government's previous amendments are a loss of the obligation on the government to negotiate in good faith and the reduced scope of consideration by the independent body. In effect, this will allow existing State structures (typically a mining warden's court making recommendations to a Minister) to be used to deal with native title issues relating to mining on pastoral leases. Overall, while the alternative scheme will give registered native title holders some leverage, it will be less than the Right to Negotiate.

**Conclusion**

The Howard/Harradine agreement is an improvement on the Government's Bill. But the benchmarks for the Indigenous evaluation of the agreement are the current NTA, the *Wik* Decision and the position of the NIWG in the Yellow Document (Co-existence – Negotiation and Certainty). Against these benchmarks the Bill as a whole reduces the ability of Indigenous people to have a meaningful say in what happens on their traditional country but not as much as the Government originally wanted to.

In particular, the Bill's passage will mean:

- A reduction in the say native title holders have about exploration in their traditional country, moderated to some extent by alternative schemes for consultation.
- The opportunity for States and Territories to replace the Right to Negotiate on pastoral leases with an alternative scheme that has many elements of the Right to Negotiate. The practical effect will depend on what schemes are actually implemented by the various State governments.
- The full range of primary production activities will be allowed on what are now pastoral leases without negotiating with the native title holders. While there are some limits on this, they are mostly ineffective.
- That despite some improvement in procedural rights for native title holders, overall it makes it easier for State governments to pursue the complete extinguishment of native title on pastoral leases by compulsory acquisition of co-existing native title rights and upgrading the lease to freehold, thereby extinguishing all native title rights.
- Interim statutory access rights to pastoral leases will be available to some but not to those Indigenous people who have been locked out of their traditional country or for some other reason did not have regular physical access at the date of the *Wik* decision.
- Native title holders will have less of a say in a whole range of Government activities on their traditional country including the management of national parks, forest reserves and other reserves, public facilities and water resources.
- Although some of the extinguishment pre-empting the common law has been removed, it still says what kinds of leases (in the Schedule) extinguish native title before the courts have had a chance to consider them.
- Native title holders, as in the current NTA, will not be able to have a meaningful say in offshore fishing and mining which impacts on native title rights.

- To get the Right to Negotiate some native title holders will be required to prove traditional connection and in addition establish physical connection with the land. However the Howard/Harradine agreement does provide a significant "locked gates/stolen generation" exception.
- It will be harder for native title holders to present their case in a claim hearing. Under the present Act the court must take account of Indigenous cultural concerns. Under the Government's Bill taking account of cultural concerns is made optional. Also the strict rules of evidence will apply unless the claimants can convince the court otherwise.

*Compiled from ATSIC Analysis, ATSIC 5/7/98*

In a joint statement issued today, ten constitutional experts and leading barristers warned that the constitutional validity of the revised NTA Bill was still in doubt. They suggested that the Bill would be vulnerable under the constitution's race powers because it waters down the NTA. They also said that the Bill's system for assessing compensation to native title holders was inadequate. *(Age, 6 July, pA3)**

The National Indigenous Working Group warn that the amendments deny Indigenous people the protection of being able to negotiate the grant of future commercial fishing licenses or participate in joint management of the sea. *(NIWG Media Release, 6 July, p1)*

Queensland Premier Peter Beattie and NSW Labor premier Bob Carr, will consider a joint approach to State legislation on native title. *(Aus, 7 July, p2)**

The Federal Court has found that native title could exist over areas of sea and the sea-bed. Justice Howard Olney ruled on a native title claim covering seas surrounding Croker Island off the Northern Territory. Traditional owners warned that this finding could be over-ridden by the amendments to the NTA proposed by the Federal Government. *(SMH, 7 July, p5)** Senator Nick Minchin said he was confident that the Croker Island decision would not affect the Government's planned amendments. *(Aus, 7 July, p1)** The Bill has provisions to allow governments to regulate and manage water, to grant mining and fishing rights and to pay compensation for impairment or extinguishment of offshore native title. *(CT, 7 July, p1,2)*

A rally, hosted by Australians for Native Title and Reconciliation, was held outside Parliament House yesterday. The people present were protesting against the Government's NTA Bill. *(CT, 7 July, p2)*

Following the Croker Island decision, Queensland's commercial fishers have called for other claims over sea and water resources to be reframed to provide for co-existence rather than exclusive access. *(CM, 8 July, p2)*

After 105 hours of debate on the NTA Bill, the Senate voted to pass the amended legislation as negotiated between Senator Harradine and the Prime Minister. *(Aus, 8 July, p2)**

The Council for Aboriginal Reconciliation has asked that the NTA Bill be re-negotiated with Indigenous people, saying they felt powerless and alienated from the political process. *(CT, 8 July, p3)**

Mr Dick Wells, Executive Director of the Minerals Council of Australia said that the industry was pleased that the NTA had been amended, saying all groups involved have recognised the need for amendments. *(Minerals Council Media Release, 8 July, p1)**

The Human Rights and Equal Opportunity Commission says that while the latest amendment to the Racial Discrimination Act clause is an improvement on the clause in the present *Native Title Act*, it may still not protect native title interests from racially discriminatory treatment. The new 'RDA clause' provides that the States and Territories must exercise their powers in a non-discriminatory way, and that where the amended Act is ambiguous it must be interpreted consistently with the RDA. Where the amended NTA is not ambiguous, however, and its effect *is* discriminatory, the RDA will not apply. It will be overridden. *(HREOC Media Release, 8 July, p1)*

ATSIC Chair, Mr Gatjil Djerrkura, is seeking an early meeting with the Prime Minister following the passage of the native title legislation through the Parliament today. Mr Djerrkura wants to discuss the implementation of the legislation with Mr Howard, saying ATSIC and the native title representative bodies expect to be fully consulted in the development of alternative State schemes for the administration of native title. *(ATSIC Media Release, 8 July, p1)*

The National Farmers Federation has welcomed the passing of the Government's native title legislation, saying it would approach the legislation in good faith to make it workable. *(FinR, 9 July, p5)**

National Native Title Tribunal President, Justice Robert French, projects that the tough new registration test will disallow about half of the 700 claims before the Tribunal. The new test will pose an administrative problem for the Tribunal, which will have to reassess all of the claims before it in the light of the new legislation. *(SMH, 11 July, p7)*

The ATSIC Commissioner with responsibility for Native Title, Commissioner Geoff Clark, says Native Title Representative bodies will not be de-registered and then asked to re-apply for accreditation as reported on the ABC News in Cairns last Friday.
The facts are:

- The *Native Title Amendment Bill 1997* establishes a new process for the determination of Native Title Representative Bodies.
- Over a transition period of a year, following the commencement of the amendments, all existing NTRBs will be required to re-apply for Representative Body status.
- Existing Representative Bodies will continue to perform their functions during the transition period. They will also be given priority in invitations from the Minister to apply for Representative Body status under the new regime.

Commissioner Clark said that any renomination of Native Title Representative Bodies should not be politically motivated, pointing out that existing Representative Bodies have nothing to fear as long as they are carrying out their functions under the legislation – that is, representing the native title holder. *(ATSIC Media Release, 21 July, p1)*

Father Frank Brennan has warned Indigenous groups that a constitutional challenge to the Government's native title legislation could leave them worse off. Father Brennan feels that changes on the Bench of the High Court would make it unlikely that any decision on the legislation would leave them better off. *(SMH, 24 July, p18)*

The *Native Title Amendment Act 1998* received royal assent on 27 July 1998. A commencement date is yet to be announced. *(Anthropological Society List, electronic bulletin board, 30 July)*

## Queensland

Queensland Premier, Mr Peter Beattie, emphasised the need for a 'national approach' to native title because of concerns about the effect of different laws on cross-border developments. He said he was unlikely to implement a right to negotiate regime that was more extensive than the other States. *(FinR, 10 July, p9)** Mr Beattie hopes to hold discussions with the other State leaders on native title, and to deal with the issue within six months. *(CT, 10 July, p3)**

Mr Beattie has announced the formation of a task force to find an alternative to the Federal right to negotiate regime through State legislation. *(CM, 15 July, p4)**

The Queensland Government yesterday began negotiations with stakeholders to discuss the Government's approach to native title. After discussions with Premier Beattie, ATSIC commissioner Terry O'Shane said the talks were a 'step in the right direction'. *(Aus, 17 July, p5)*

Queensland Premier, Peter Beattie, said that his State would pass legislation on native title within three months. The Government's first piece of legislation will be to validate leases issued between the *Mabo* and *Wik* decisions. This legislation will go before Parliament on July 30. The Government agreed to notify Indigenous groups within six months, as to where leases had been granted. Preliminary talks on the legislation took place with Aboriginal, mining and pastoral representatives. Mr Beattie said a working party, which includes three representatives from each interest group as well as government appointees, has been set up to discuss the right to negotiate, regional agreements and compensation and other issues. *(WA, 18 July, p6)**

The validation bill that deals with 'intermediate period acts' made between 1994 and 1996, will effectively extinguish native title over 13,000 leases. *(FinR, 28 July, p8)** The Government is looking at future opportunities to assist Aboriginal people as a method of compensation. Mr Beattie suggests projects such as infrastructure to improve water supply and housing may be fair and equitable. *(CT, 28 July, p2)**

### Western Australia

The WA Government is planning to set up its own native title tribunal this year. The current system for dealing with native title claims will be scrapped and replaced by a new State system of registering claims. According to a State Government negotiator, the WA Government hopes to reduce the number of claims, the size of claims and the rights being claimed. Under the WA regime, Indigenous claimants will lose the right to negotiate over mining on pastoral leases. This right will be replaced with procedural rights as held by other stakeholders. *(WA, 3 July, p1)*

### Tasmania

Tasmanian Aboriginal Centre legal manager, Mr Michael Mansell, said the new threshold test for lodging native title claims would seriously impact on Tasmanian Aboriginal people. The requirement that claimants show a continuous physical link with the land will exclude most people because of government removal policy. He hopes to do a deal with the State Government over any native title claims that may arise out of the High Court's *Wik* decision. *(LE, 10 July, p11)*

## GENERAL NATIVE TITLE ISSUES

### International

Agreement has been reached in Canada's province of British Columbia between the province and the Nisga'a community. The 6,000 people of the Nisga'a community live in BC's north-western corner, close to the border with Alaska. The Treaty guarantees the Nisga'a title to 1,930 square kilometres of land, some $C200 million ($216 million) in compensation and control over the region's natural resources. Negotiators are pleased with the agreement that should act as a model for other claims. *(FinR, 18 July, p8)*

[The text of the 300 page Nisga'a Treaty can be found at:
http://www.aaf.gov.bc.ca/aaf/treaty/nisgaa/docs/nisga_agreement.html]

## National

During the Queensland election campaign Pauline Hanson, leader of the One Nation Party, pledged to abolish native title. *(FinR, 3 June, p1)** Hanson also attacked the United Nations Draft Declaration on the Rights of Indigenous People, to be signed by 2004. *(CT, 3 June, p3)**

### United Nations *Draft Declaration on the Rights of Indigenous Peoples*

In early June the Independent Member for Oxley, Ms Pauline Hanson, drew attention to the United Nations *Draft Declaration on the Rights of Indigenous Peoples*. Concerns over separatism and secession have been central to debate over the *Draft Declaration* but the Draft also addresses issues of fundamental human rights. In 1982, in the midst of growing international concern over the treatment of Indigenous peoples world wide, the United Nations Economic and Social Council established a Working Group on Indigenous Populations (WGIP). The establishment of the WGIP was a significant act of recognition of the struggle of Indigenous peoples and the need for an international response to their claims.

The Working Group was established for the dual purposes of providing a forum to review the experiences of Indigenous peoples and to draft standards for the treatment of Indigenous peoples by member states. The Working Group hears submissions from states, non-governmental organisations and from Indigenous peoples themselves. Each year, the review of developments provides Indigenous peoples with an opportunity to share their experiences and challenge the governments of the states in which they find themselves. The states, in turn, are able to respond to criticism and highlight positive developments. Since 1985, the WGIP has concentrated on drafting standards for the promotion and protection of rights of Indigenous peoples.

*The Draft Declaration on the Rights of Indigenous Peoples* was developed based on the rights of minorities under current human rights instruments and the rights of peoples as they are currently understood. The WGIP recognised that in order to adequately address the concerns of Indigenous peoples, a declaration must protect Indigenous peoples' individual rights, distinct collective identity, education, economic and social rights, land rights, self-government rights and self-determination rights.

The Indigenous participants at the WGIP were concerned at the level of compromise that may occur over issues such as the fear of secession. During the eleven years of drafting, the states' representatives argued strongly against the inclusion of 'peoples' rights' namely the right of self-determination. For example in 1983, the Australian representative, while supporting the concept of 'self-management' sought to avoid 'any suggestion that separate development or secession is at issue'. Eventually, through many years of dialogue, the importance of the right was recognised by all the participants and the final draft included, at Article 3, that:

*Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

This is not a novel right. The same right is expressed at the beginning of the International Human Rights Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (The ICCPR and ICESCR, respectively).

Article 31 of the *Draft Declaration* purports to elucidate the meaning of self-determination for Indigenous peoples but implicitly excludes secession. Article 31 states:

*Indigenous peoples, as a specific form of exercising their right to self-determination have the right to autonomy, or self-government in matters relating to their internal and local affairs including culture, religion education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.*

The inclusion of this Article, while disappointing some Indigenous peoples, may allay the fears of states as the Draft travels through the United Nations hierarchy. An inter-sessional working group of the Commission on Human Rights (further up the hierarchy of UN bodies) is now considering the *Draft Declaration*.

*Lisa Strelein, Visiting Research Fellow, NTRU. 30/7/98*

Representatives of various interest groups concerned with issues around native title gathered at a symposium called Native Title: Facts, Fallacies and the Future. Paul Wand, of Rio Tinto, pointed to the importance and effectiveness of native title processes to reach amicable agreements. John Sheehan, of the Australian Institute of Valuers and Land Economists, said that in general native title has not affected property values, including pastoral leases. Other participants talked on issues of history, international law and human rights. Discussion at the forum focused on possible solutions to problems, concluding that negotiation is the key to positive agreements. *(SMH, 8 June, p13)*

In a Supreme Court ruling, Justice Alan Demack ruled that native title could not be extinguished unless it was first proved it existed. He dismissed an application by Savage Togara Pty Ltd for its Togara North Coal joint venture to make a declaration that native title had been extinguished over four pastoral leases in central Queensland. The Ghungalu Aboriginal people have lodged several claims over this area. *(CM, 11 June, p3)*

Arguments were put yesterday by Aboriginal claimants in the *Fejo* case in what may be the first High Court test of whether native title can be revived after a freehold grant comes to an end and land returns to the Crown. Mr Fejo's barrister, John Basten QC, argued that native title could be 're-recognised' and 're-enforced' by Australian law once an inconsistent grant, such as freehold, had been terminated. *(Aus, 23 June, p2)**

Rural Landholders for Coexistence is organising a workshop on keeping native title claims out of the courts. The workshop will be held in Charters Towers in August and aims to provide accurate and practical information about negotiated agreements to a wide range of stakeholders. *(Northern Miner, 26 June)**

The leader of the One Nation party, Ms Pauline Hanson, said that if her party secures the balance of power in the next election, they would only support the Government if a

referendum was held on the repeal of the *Native Title Act* without compensation to Indigenous people. *(SMH, 29 June, p2)**

Native title is one issue that will be discussed at the National Youth Reconciliation Convention. The Convention is to be held in Darwin. *(Gympie Times, 30 June, p7)*

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, invite submissions to their inquiry into the operation of the *Native Title Act 1993.* Inquiries about lodging a submission should be made to the Committee Secretary by phone on (02) 6277 3419 or by facsimile on (02) 6277 5706. *(Media Release, 1 July, p1)*

The Federal Government has approved money through the Attorney-General's Department, for Western Australian farmers to get legal advice to fight native title claims. *(WA, 1 July, p4)*

The National Native Title Tribunal has introduced new measures to accelerate the resolution of native title applications. Queensland Regional Director of the NNTT Simon Nish said applications would now be assessed according to 11 criteria including their state of readiness for mediation, the level of intra-Indigenous conflict, the ability of the applicants to form a body corporate and develop management plans and the attitude of the State Government to the application.

Mr Nish said applications that were sufficiently developed to meet the criteria would be given extra assistance to enter the mediation phase. Other applications would be classified as requiring further preparation before mediation or for quick referral to the Federal Court because of irreconcilable issues. In the interests of all parties, the Tribunal would continue to encourage the refinement of those applications that were not yet ready for mediation. The progress of the applications would be reviewed every six months for possible inclusion in the priority list, and applicants could appeal the Tribunal's decisions.

Applicant groups, including native title representative bodies, would be consulted on the implementation of the policy over the next few months and Indigenous representative bodies would be invited to nominate native title applications for high priority resolution. *(NNTT Media Release, 8 July, p1)*

In response to the passage of the NTA Bill through the Senate, Wadjularbinna Nulyarimma, Isobel Coe, Billy Craigie and Robbie Thorpe, on behalf of Aborigines across Australia, asked Justice Crispin of the ACT Supreme Court to issue warrants for the arrest of Prime Minister John Howard, Deputy Prime Minister Tim Fischer, Senator Brian Harradine and One Nation party leader Pauline Hanson. The application by the four representatives of the Aboriginal tent embassy argues that the passing of the NTA Bill continues the crime of genocide. *(CT, 21 July, p4)** The application was adjourned until August 11. The court will make its decision after one more day of evidence. *(CT, 24 July, p1)*

A delegation of ten people will attend the United Nations' Working Group on Indigenous Populations. The delegation includes ATSIC Chair, Mr Gatjil Djerrkura and FAIRA general manager, Mr Les Malezer. The delegation is expected to attack the Howard Government's NTA Bill, among other issues of concern. *(Age, 27 July, pA1)* The delegation plan to ask foreign governments to impose 'targeted' sanctions on companies from their own country,

where Aboriginal people consider the companies are breaching native title rights in their Australian operations. *(SMH, 25 July, p15)*

The National Party and the One Nation Party have called for the removal of the 'race power' provision from the Constitution, labeling it inappropriate. The race power gives the Government power to make special laws in respect of Aboriginal people. The Prime Minister says he will not support a referendum at the next election to remove the race power. The Australian Democrats believe the race power should be removed, to be replaced by an 'equality clause' similar to that in the United States. *(SH, 26 July, p5)*

ATSIC Chair, Mr Gatjil Djerrkura, last night spoke at the United Nations Working Group on Indigenous Populations in Geneva. He told how the Federal Government had shut Indigenous people out of discussions about changes to the Native Title Amendment Bill, while other stakeholders were consulted. The consequence of this, according to Mr Djerrkura, will be that Indigenous people will have no effective voice about consequences of mining exploration and development on their native title rights and interests, nor about the limited access of native title holders to pastoral leases. Mr Djerrkura pointed out that Australia has seen a large groundswell of support from the general community for the protection of native title rights. *(Aus, 29 July, p13)**

## New South Wales

NSW Farmers have backed down over a native title test case before the Supreme Court after conceding that there is no claim over one of the two pastoral leases they indicated were affected. The National Native Title Tribunal informed the NSW Farmers' Association that there was a native title claim over both leases. They now have only one pastoral lease in the test case that is aimed to test the legal status of Western Division leases in NSW. *(SMH, 9 June, p8; 19 June, p2)*

Western Division leaseholders say they remain in limbo after the Federal Government's deal on native title. Western Division council chairman, Mr John Cobb, said uncertainty would remain until the test case before the Supreme Court is decided. *(SMH, 3 July, p6)*

The NSW Farmers Association has prepared a native title kit for use in high schools across NSW. Mr Steve Wright, acting director of the NSW Aboriginal Land Council, has labeled the kit as political propaganda littered with factual errors. The kit wrongly says the 1967 referendum gave Aboriginal people the right to vote, it also misrepresented the NSW *Aboriginal Land Rights Act* by saying that it gave Aboriginal people 'rights of access to all land in NSW for traditional purposes'. Mr Wright said the rights of access were only with the agreement from the landholder and that there are no such agreements in NSW. Mr Wright said the kit should not be distributed before the facts were checked. *(SMH, 22 July, p4)*

## Queensland

### Torres Strait

Torres Strait Regional Authority chair, Mr John Abednego, said the Federal Court decision recognising native title rights of the people of Croker Island over areas of sea, created a precedent for the Torres Strait region. Mr Abednego said the whole of the Torres Strait area should pursue recognition of native title in the sea through regional agreement on sea rights. *(DT, 15 July, p18)*

### Torres Strait

Chair of the Torres Strait Regional Authority, Mr John Abednego, has called for Islanders to lodge one consolidated claim to the waters of the Strait. Mr Abednego says that Islanders may be able to present stronger evidence to native title sea rights than the traditional owners of Croker Island. On July 6, Justice Olney of the Federal Court awarded non-exclusive native title rights over the sea, to traditional owners of Croker Island. The Keriba Lagua Traditional Land and Sea Claimants Association have rejected Mr Abednego's proposal. *(FinR, 27 July, p7)**

## Western Australia

The National Native Title Tribunal will hold a conference in Kalgoorlie with pastoralists and local government representatives as key players. The conference aims to bring together non-Indigenous people involved in the native title process to share experiences and discuss common issues. Tribunal Registrar, Chris Doepel, said the conference aims to provide information and practical skills to develop mutual understanding and guide people through the mediation process. *(NNTT Media Release, 5 June, p1)*

The Kimberley Land Council has organised a two-day conference to discuss regional development and co-existence. The conference will involve Indigenous leaders, representatives from the pastoral, pearling, mining, tourism and horticultural industries, as well as local and State government and environmentalists. Mr Peter Yu, executive director of the KLC, said that Aboriginal people wanted to play a greater role in the region's economy. *(WA, 9 July, p30)** Mr Yu said the emphasis would be on panel and workshop discussion, which would aim to achieve progress for the resolution of native title issues through negotiated agreements. *(CM, 10 July, p6)**

## Tasmania

Representatives from about 15 Tasmanian Aboriginal organisations gathered for a two-day conference in Launceston to discuss how native title interests in the State should be represented. The decision of whether a Native Title Representative Body should be set up for Tasmania was left open pending community consultation on the matter. *(LE, 12 June, p10)*

## Northern Territory

The Northern Territory Government has offered $7.4 million to Aboriginal traditional owners in compensation for land to be acquired for use in the Darwin to Alice Springs railway. The Government first announced this offer as their part of an agreement, which was to be signed on May 30. However, the Northern and Central Land Councils put forward an alternative proposal for communities to receive 10 per cent equity in the project in 50 years' time, as a benefit for future generations. The Territory Government reject this proposal and are now threatening to go to the Federal Government for legislation to compulsorily acquire the land. The deadline for a decision on the course of the project has been set on August 27. *(NTN, 26 July, p16)**

The Northern Territory Government said more than 600 titles for exploration and mining have been held up since the High Court's *Wik* decision. Chief executive officer of the NT Minerals Council, Kezia Purick, said that both the Northern Territory and Queensland had stopped issuing exploration titles on pastoral land after the decision. *(NTN, 28 July, p6)**

# RECENT PUBLICATIONS

## Books and Reports

***The Aboriginal and Torres Strait Islander Heritage Protection Act 1984***. Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Parliament of the Commonwealth of Australia, April 1998.

**Summary:**

This is the Committee's report on the inquiry into the *Heritage Protection Act*. The committee was able to conduct an extensive inquiry with the benefit of the report prepared by the Hon Elizabeth Evatt in 1996. It was agreed by the committee that there continues to be a need for 'last resort' Commonwealth legislation concerning Indigenous heritage protection. Further, it should be a requirement of the Federal Act that States and Territories provide 'blanket' protection of Indigenous heritage to achieve accreditation under the Act. The Committee also concluded that, in order to establish that a site was significant, disclosure of culturally sensitive information is not necessary. *(Accompanying letter, Warren Entsch MP, Committee Chair, 2 April, 1998)*

***The Aboriginal and Torres Strait Islander Heritage Protection Bill 1998***. Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Parliament of the Commonwealth of Australia, May 1998.

**Summary:**

The Committee received twenty-eight submissions and held two days of public hearings in Melbourne and Canberra. The resulting report recommends that the Bill provide for blanket, or presumptive protection of Indigenous heritage. It recommends a more detailed and comprehensive Commonwealth Standard by which State and Territory heritage protection regimes may be accredited. The committee is also concerned that the definition of 'national interest' should include the protection of Indigenous heritage. This would mean appeal could be made to the Commonwealth even where heritage protection regimes have been accredited in the States and Territories. *(Accompanying letter, Warren Entsch MP, Committee Chair, 1 June, 1998)*

***Analysis of the Howard/Harradine Agreement***. ATSIC, Australia, 1998. (see page 13 above)

***Customary Marine Tenure in Australia***. Eds: Nicolas Peterson and Bruce Rigsby, Oceania Publications, Australia, 1998. RRP $45 (paperback)

***The Great Land Grab: What every Australian should know about Wik, Mabo and the Ten Point Plan*** by Michael Bachelard, Hyland House, 1997.

***The Native Title Amendment Act 1998***. Commonwealth of Australia.

- The amendment act has now been posted on the Scale WWW site. You can find it in "browsable" format at: http://law.agps.gov.au/html/comact/10/5874/top.htm
- To download a copy of the *Native Title Amendment Act 1998* in rtf format go to: http://law.agps.gov.au/cgi-bin/download.pl?/scale/data/comact/10/5874
- The National Native Title Tribunal has compiled two new versions of the *Native Title Act 1993* containing changes made by the *Native Title Amendment Act 1998*. One version shows deletions and insertions, the other does not. This can be accessed via the Tribunal homepage at: http://www.nntt.gov.au

***Native Title & the Descent of Rights*** by Peter Sutton, National Native Title Tribunal, Australia, 1998.
Contains two discussion papers:
1. *Kinship, Descent & Aboriginal Land Tenure*, an analysis of kinship, descent and basic social organisational concepts and theories.
2. *Families of Polity: Post Classical Aboriginal society & Native Title*, explores the social organisation of Aboriginal groups and families, and the cultural practices and social institutions which have arisen since colonisation.

***Native Title, Mining and Mineral Exploration – a postscript*** by Ian Manning, ATSIC, Australia, 1998.
**Summary:**
This publication details ATSIC's latest research into the impact of native title on the mining industry. The report finds that negotiated agreements between miners and Indigenous communities are increasing. *Native Title, Mining and Mineral Exploration – a postscript* updates last year's report by Dr Ian Manning from the National Institute of Economic and Industry Research. Dr Manning warns that curtailment of the right to negotiate will place at risk the pioneering relationships between mining companies and Aboriginal communities. *(ATSIC Media Release, 11 June, p1)**

***Ngarrindjeri Wurruwarrin: a world that is, was, and will be*** by Diane Bell, Spinifex Press, Melbourne, Australia, 1998.
**Summary:**
*Ngarrindjeri Wurruwarrin* takes up the issues of the Hindmarsh Island case. Written in conjunction with the people of the Murray Mouth/Goolwa area, this book tells the untold story. The book examines the culture, politics and history of the Ngarrindjeri people, as well as the burning issues of the women's business and the Hindmarsh Island case. *Ngarrindjeri Wurruwarrin* will be launched in Adelaide on Wednesday 26 August.

***Understanding the Amended Native Title Act***, National Native Title Tribunal, Australia, August 1998.

***Working Out Agreements – A Practical Guide to Agreements between Local Government and Indigenous Australians***. Produced by the Australian Local Government Association, 1998.
**Summary:**
The ALGA with financial assistance from the Aboriginal and Torres Strait Islander Commission and support from the National Native Title Tribunal has produced a practical resource guide to developing agreements between Local Government and Indigenous Australians titled *Working Out Agreements*. The Guide provides practical advice for developing an agreement at the local level. It discusses how to select the appropriate type of agreement and explains ways to implement and review an agreement to ensure its commitments are fulfilled. Case studies show the range of different agreements already in place and the types of issues that might be included.

## Film

***After Mabo***. By Richard Franklin.

**Summary:**

A documentary film focusing on the Mirimbiak Nations Aboriginal Corporation, who are responsible for native title claims in Victoria. The film also follows native title issues since the *Mabo* decision. Filmmaker Richard Franklin presents native title from an Aboriginal perspective.

## Newspapers, Periodicals and Journals

***The Aboriginal Independent Newsletter*** is based in Western Australia. The Newsletter will celebrate its first birthday on August 6 in Perth.

***Aboriginal Way*** is a publication of the Native Title Unit, Aboriginal Legal Rights Movement in South Australia. Their July issue contains a 4-page insert on the latest native title developments. Website address: http://www.geocities.com/Athens/Acropolis/7001/alrm.htm

***Feedback*** is a newsletter for the Indigenous Heritage Officers' Network. It is funded by the Australian Heritage Commission. The latest newsletter has a list of useful heritage websites. The Heritage Commission's home page is http://www.ach.gov.au

***Indigenous Law Bulletin***

**Review:**

The *Indigenous Law Bulletin* (ILB) is a monthly journal focusing on Indigenous peoples and the law. The ILB emerges from the Indigenous Law Centre of University of New South Wales and remains the only journal of its kind. With its stable mate, the Australian Indigenous Law Reporter, the ILB fills an important place in legal literature, by exclusively concerning itself with Indigenous legal issues.

The ILB contains reasonably short articles as well as book reviews, case notes and recent happenings. As a refereed journal, the calibre of the articles is always high, particularly as legal practitioners in this field hold the journal in such high esteem. With the quality of the articles the accessibility is also retained, in part due to the length and also the style.

The July issue of the *Indigenous Law Bulletin* focuses on criminal justice. Articles include:

- an analysis of changes to Aboriginal legal services;
- an historical look at Indigenous legal autonomy in Australian law of the nineteenth century;
- an article by Ron Levy on the 'honest claim of right' defence of Galarrwuy Yunupingu in the Northern Territory District Court; and
- an examination of public drunkenness laws.

There is a subscription fee, but at $40 per annum for individuals and $45 for organisations, the ILB is reasonably affordable, particularly for a law journal. *(Review by Lisa Strelein)*

***Land Rights News – One Mob, One Voice, One Land*** is a newspaper produced by the Central and Northern Land Councils in support of the land rights movement. Website addresses:

- www.ozemail.com.au/~nlc95
- www.clc.org.au

***Walking Together*** is a magazine produced by the Council for Aboriginal Reconciliation, their latest issue (No.22, July 1998) has a section on 'Developing Local Agreements'. Website address: http://www.austlii.edu.au/car/

***Yarmbler – Land, Integrity, Culture*** is a magazine produced by Mirimbiak Nations Aboriginal Corporation. Volume 5, May 1998, includes articles on the Hindmarsh decision, the native title amendments and Croker Island as well as a section on claims updates. Website address: www.indiginet.com.au/mirimbiak

## Native Title Research Unit Publications

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

***Working with the Native Title Act: alternatives to the adversarial method.*** Edited by Lisa Strelein, 1998. ($9.95 including postage)

**Summary/Foreword:**

The workshop for legal practitioners in the native title field held by the NTRU at AIATSIS in June 1997, examined issues for practice in non-adversarial native title processes, such as those set up for the National Native Title Tribunal. Over two days, legal practitioners, anthropologists and others shared their insights and experiences. This volume is an edited collection of the presentations to the workshop as well as a review of the discussions. The workshop was a valuable opportunity to discuss some of the more strategic and practical issues of native title representation. It is hoped that this volume will similarly be a valuable resource for practitioners. There has been a great deal of interest from the participants and others in following up the workshop this year. This interest highlights the need for lawyers working in native title to share their experiences as they confront new and unfamiliar processes and problems.

***Regional Agreements: Key issues in Australia, volume 1***. Edited by Mary Edmunds, 1998. ($16.95 including postage)

**Summary:**

*Regional Agreements: Key Issues in Australia, Volume 1* is the culmination of a Regional Agreements project undertaken by the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies, with supplementary funding from ATSIC and from CRA (now Rio Tinto). Discussion papers, case studies and an overview paper were produced with the benefit of a series of workshops that involved representatives from a wide range of groups involved in native title processes and regional agreements. While there were differences across regions, important commonalities also emerged. Volume 1 of 'Regional Agreements: Key Issues in Australia' contains an abridged overview paper and summaries of each of the case studies and papers prepared in full for Volume 2 (forthcoming).

***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

**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

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

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*This newsletter was prepared by Penelope Moore*