# A I A T S I S

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

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# NATIVE TITLE NEWSLETTER


No. 3/99


## NATIVE TITLE IN THE NEWS – March and April 1999

The *Native Title Newsletter* is published on a bi-monthly basis. The newsletter includes a summary of native title as reported in the press. Although the summary canvasses papers from around Australia, it is not intended to be an exhaustive review of developments.

The *Native Title Newsletter* also includes contributions from people involved in native title research and processes. Views expressed in the contributions are those of the authors and do not necessarily reflect the views of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

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

Ad = Advertiser (SA)
Age = The Age
Aus = Australian
CM = Courier Mail (QLD)
CP = Cairns Post
CT = Canberra Times
DT = Daily Telegraph
FinR = Financial Review
HS = Herald Sun (VIC)
IM = Illawarra Mercury
LE = Launceston Examiner
Mer = Hobart Mercury
NNTT = National Native Title Tribunal
NTA = *Native Title Act 1993*
NTN = Northern Territory News
QNT = Queensland Native Title News
SC = Sunshine Coast Daily
SMH = Sydney Morning Herald
Tel M = Telegraph Mirror (NSW)
WA = West Australian
WAus = Weekend Australian

# News from the Native Title Research Unit

## Native Title Issues Paper: Register

The Institute's Native Title Research Unit maintains a Register of people interested in entering into contracts to write issues papers for publication.

Should you be interested in being included on the Native Title Issues Paper Register, send your expression of interest, addressing the selection criteria, with an accompanying c.v. to:

The Deputy Director
Research
AIATSIS
GPO Box 553
Canberra ACT 2601

### Selection Criteria

Selection criteria for Native Title Contracts are as follows:

1. Demonstrated experience in native title. This should include field research or other relevant experience.

2. Working experience with Aboriginal or Torres Strait Islander organisations, or with a Native Title Representative Body.

3. Highly developed analytical and policy skills.

4. Demonstrated ability to work within a set time-frame and to develop recommendations, write reports and prepare material for publications.

Further information is available from Lisa Strelein (02) 6246 1155.

## New Publication

***Regional Agreements: Key Issues in Australia – Volume 2, Case Studies***. Edited by Mary Edmunds, 1999. This publication will be available shortly.

**Summary:**

*Regional Agreements: Key Issues in Australia - Volume 2, Case Studies* is the culmination of a Regional Agreements project undertaken by the NTRU, AIATSIS 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* presented summaries of an overview paper, case studies and supplementary papers that are published in full in Volume 2.

The case studies were undertaken in the following areas:

- Broome (Patrick Sullivan);
- Cape York (David Martin);

- the Goldfields (Kado Muir);
- the Gulf - Century Zinc (Robert Blowes and David Trigger);
- south-west South Australia (Lillian Maher);
- the Torres Strait (Bill Arthur); and
- Victoria (Julie Finlayson).

Supplementary papers were provided on comparative Canadian material (Michele Ivanitz) and on the question of process in developing a regional agreement (Ciaran O'Faircheallaigh).

The volume also includes the scoping paper prepared for this regional agreements project by Patrick Sullivan and an introduction and overview by Mary Edmunds.

Volume 1 is intended as a working document for Native Title Representative Bodies, industry, government, and other parties to negotiations concerning agreements. Volume 2 is intended as a further and more detailed resource for those engaged in such negotiations.

## Current Issues

### Research Report by Kado Muir

I have been busy researching and writing papers over the last two months. The first paper is titled, *Songs, Land and Culture*. I will present it at the first AIATSIS Seminar Series for 1999, called 'State of the Arts: Issues of Indigenous Representation'. The second paper is titled *Native Title as a Right to Resources* and will be presented at the International Symposium on Society and Resource Management (ISSRM99) in Brisbane in July 1999.

Songs are an integral part of Aboriginal and Torres Strait Islander culture and often demonstrate a continuing cultural connection to country. The focus of my research is on a number of songs belonging to my people from the northern Goldfields region of Western Australia. I deliberately focused on the secular traditionally structured songs. These songs are a great repository of knowledge about the whole range of relationships between people, culture and land. The subject matter range from dreamtime songs, hunting and gathering based songs to pastoral work, railway work and relationships or observations about contact with settler society. A striking feature of some of these songs is that they also provide an insight into the transformations occurring within society when the songs were first sung.

In terms of native title research, songs are critical indicators of the relationship between people and land. In making songs people are inspired by their life experiences, their culture and their relationship with country. These songs need not necessarily be traditional songs sung in language. Native title researchers could analyse songs to demonstrate the maintenance of culture (laws acknowledged and customs observed) and look at the subject matter to demonstrate connections with country. I am sure there are a number of music researchers out there who could offer more comment on this, it would be a good subject for an Issues Paper.

The second paper focuses on an issue that is much broader in scope and politically topical. In the paper I wish to explore the concept of native title as a right to resources and how Aboriginal and Torres Strait Islander peoples maintain and enjoy rights to resources based on their laws and customs. I am not sure how this paper will develop but I thought I'd share some of the premise with you now.

The connection of Aboriginal and Torres Strait Islander peoples to their lands and waters is fundamentally a spiritual relationship. This relationship allowed for the ownership, use, management and control of the land and its resources. The dispossession of land was to facilitate the access of pastoralists and later miners to resources. This access came at the price of disrupting traditional economies, with absolutely no compensation. In gaining the recognition of ownership of land Aboriginal and Torres Strait Islander peoples are still struggling against this legacy of dispossession and its ongoing manifestation in the Australian economy.

Sections 211 and 212 of the *Native Title Act 1993* reflect this desire to prevent Aboriginal and Torres Strait Islander people from accessing resources and engaging in commercial activities on the basis of their native title rights. This attitude seems to flow from the widespread view that Aboriginal and Torres Strait Islander peoples can only participate in a frozen pre-contact economy. This view has no relationship with common sense and evidence. The very first interaction between Europeans and Aboriginal and Torres Strait Islanders invariably resulted in the trade of goods, knowledge, skills and human resources. This commercial interaction did not automatically take away any rights of ownership, use, management or control over the resources, nor did it freeze our inherent commercial structures in time. Ownership of resources in the land/water and of the land/water is one of the primary rights of Aboriginal and Torres Strait Islander peoples. This can not be equated to classes of activities like hunting, fishing and gathering, nor limited to pre-contact economic structures. Further the recognition and promotion of Indigenous economic systems would address wrongs of the past and allow greater opportunity for economic self-determination.

I welcome any thoughts or comments from readers on these and other issues. In particular I would like to hear news on your experiences on the native title 'front line'. My email address is kado@aiatsis.gov.au

*Kado Muir, Visiting Research Fellow, NTRU, AIATSIS, May 1999*

**The CERD Committee**

'CERD' refers to the International Convention on the Elimination of all forms of Racial Discrimination. The Convention was signed by Australia in October 1966 and ratified in September 1975. Signing the Convention did not bind Australia to the terms of the Convention, but ratification did. Before ratifying a convention, a country must ensure that its domestic laws conform with the Convention. In this case, it was achieved with the introduction of the *Racial Discrimination Act 1975* (Cth), which has played an important role in the recognition and protection of Indigenous peoples' native title rights.

The Convention provided for the establishment of the CERD Committee, which receives periodic reports from countries who are a party to the Convention. The Committee last considered a report from Australia in August 1994, which, of course, included reference to the recognition of native title by the High Court in *Mabo v Queensland [No.2]* (1992) and the introduction of the *Native Title Act 1993* (Cth).

The Australian government had not submitted a periodic report since 1994 and the CERD Committee, concerned at the direction of relations between the governments and Indigenous peoples in Australia, initiated early warning procedures. In August 1998, Australia was asked to provide information to the Committee on three areas of concern, namely: the amendments to the *Native Title Act 1993*, changes in policy as to Aboriginal land rights and changes to the office of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

The Committee considered submissions from the Australian Government, ATSIC and the Acting Aboriginal and Torres Strait Islander Social Justice Commissioner, as well as members of the House of Representatives and the Senate. The CERD Committee's Decision on Australia, delivered on the 18th of March 1999, at its 54th Session, was not satisfied that Australia had met its obligations under the Convention.

The Committee pointed to Australia's history of discrimination against Indigenous peoples, particularly in relation to land. They expressed particular concern over:

- whether the *Native Title Act 1993*, as currently amended, is compatible with Australia's obligations under the Convention to act without discrimination. In particular, the Committee questioned: the 'validation' provisions; the 'confirmation of extinguishment' provisions; the 'primary production upgrade' provisions; and the restrictions concerning the right of Indigenous title holders to negotiate non-Indigenous land uses;
- the lack of participation of Indigenous peoples in the Amendment process, citing, in particular, Australia's obligations under Article 5(c); and
- the abolition of the office of Aboriginal and Torres Strait Islander Social Justice Commissioner, which is to be subsumed within the duties of a general 'deputy President' who would be responsible for all race discrimination issues.

The Committee requested that the Australian government address these issues as 'a matter of utmost urgency', asking that the Amendments be suspended and discussions with Indigenous peoples reopened. The Committee has retained the matter on its agenda for its next meeting.

The Australian government has dismissed the findings of the CERD Committee. While the Decision has no force in Australian law or politics, Indigenous peoples may make a complaint to the Committee, through the individual communication provisions of the Convention, and may also be encouraged to reconsider the constitutional question that formed a large part of the debate over the Bill.

*Lisa Strelein, Visiting Research Fellow, NTRU, AIATSIS, May 1999*

**25th Annual Conference of the Australian Anthropological Society**

The Conference will be held at the University of New South Wales from 10 to 13 July 1999. A conference panel called *Conceptualising Native Title* has been proposed by Mr Mick Dodson. There will also be plenary sessions on *New Models for Consultancy Training* with Deane Fergie as speaker and *Anthropology and Native Title in New South Wales: Towards More Positive Outcomes*. The speaker for this plenary session will be Mr Gavin Andrews, Manager, Native Title Unit, NSW Aboriginal Land Council. The *Annual Debates in Australian Anthropology*, first debate, will put the motion that 'Australian Academic Anthropology Cannot Survive without Consulting Anthropology'.

# APPLICATIONS

## Victoria

### Gunai/Kurnai People [NNTT Ref#VC97/4]

A native title application covering Crown land in the Gippsland region is the first in Victoria to pass the stringent new registration test under Commonweath native title laws. The Gunai/Kurnai application was lodged on 4 April 1997. The applicants are represented by the Mirimbiak Nations Aboriginal Corporation. Accelerated application of the test was triggered by the Victorian Government's intention to grant a mining lease within the application area in East Gippsland to Pacific Minerals Pty Ltd and ABC Resources Pty Ltd.

National Native Title Tribunal Regional Coordinator, Sue Kee, explained that the Gunai/Kurnai people have acquired the right to have a say over - but not veto - proposed mining, exploration and some other developments in the area while their native title application is pending. The Gunai/Kurnai application was the second Victorian application to face the test, but the first to pass. A further 37 Victorian applications would be tested over the next several months. (*NNTT Media Release, 6 Apr)*

### Yorta Yorta People [NNTT Ref#VC94/1]

## CONCERNED CITIZENS RESPOND

**TO THE DETERMINATION BY THE FEDERAL COURT OF THE YORTA YORTA NATIVE TITLE APPLICATION**

*The authors of this contribution to Native Title News are members of Defenders of Native Title (DONT). Based in Victoria, they met regularly to write this summary of the Yorta Yorta determination. DONT is a grass roots movement comprising churches, community groups, organisations, unions and concerned individuals, who have taken a strong stand with Aboriginal and Torres Strait Islander people against the Howard Government's 'Ten Point Plan'.*

*DONT believes the key principles are:*

- *a recognition that native title is a basic right and represents an opportunity for greater self determination for Aboriginal peoples;*
- *a confirmation of the existing rights of pastoralists and mining companies;*
- *a promotion of the need for coexistence and cooperation in a spirit of trust and good will;*
- *a respect for the property rights of all title holders on a non-discriminatory basis; and*
- *no changes to the Racial Discrimination Act.*

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The Yorta Yorta people are the Indigenous people of the Murray, Goulburn & Ovens regions of south-eastern Australia.

Members of the Yorta Yorta community applied to the Federal Court in 1994 for native title rights over 'certain parcels of public land in the Murray Darling Basin of southern New South Wales and northern Victoria'. Their application was opposed by the governments of New South Wales, Victoria and South Australia, other government and private agencies, businesses and individuals totalling over 500 opponents.

In December 1998, their application was rejected in its entirety. Justice Olney of the Federal Court determined that, before the end of the 19th century, the applicants' ancestors had

'ceased to occupy their traditional lands in accordance with their traditional laws and customs' and that '**the tide of history has indeed washed away any real acknowledgement of their traditional laws and any real observance of their traditional customs**'.

We, as ordinary citizens of Australia, believe that natural justice has not been served by this decision. Not just because we believe that the Yorta Yorta people should be acknowledged as the traditional owners of their own land, but because it represents evidence of the continuing, legalised dispossession and marginalisation of the Aboriginal population.

The thinking that led in the 1780s to the incredible conclusion that Australia was *terra nullius* (i.e. land belonging to no-one) is still in evidence today. Is it fair and reasonable to ask Indigenous people to demonstrate continuity of occupation and traditional law and custom when it was government policy that forced the break-up and dispersal of their clans and families not once, but many times, over the past 150 years?

In response to these continual acts of dispossession, the Yorta Yorta people have been claiming recognition of their land rights under various governments since 1860. **This case was their 18th attempt.**

**What is native title?**

The *Mabo* (1992) and *Wik* (1996) High Court decisions were belated acknowledgement that the legal concept of *terra nullius* in relation to Australia was a lie. It was determined that native title rights are **pre-existing** rights (i.e. existing prior to non-Indigenous occupation) which had not previously been recognised in Australian common law. As a nation, we have subsequently embarked on a process of recognition of these rights.

The Yorta Yorta case was the first major test of native title following *Wik*, and the first ever in the more heavily populated south-east region of Australia. In accordance with the principles established by the High Court decisions and the resulting *Native Title Act* of 1993, the case followed a number of avenues of inquiry:

1. It was necessary to prove that the members of the applicant group were descendants of the Indigenous people who occupied the area under application prior to the 'assertion of Crown sovereignty'.
2. The nature and content of the traditional laws, and the traditional customs observed by Indigenous people in relation to their land, had to be established.
3. It had to be demonstrated that the traditional connection with the land of the ancestors has been substantially maintained.
4. The native title rights and interests had to be recognised by the common law of Australia.

## The trial

The case took 114 days, heard 201 witnesses, attended 66 locations, and resulted in 11 664 pages of transcripts.

Justice Olney made it clear in his judgement that the aim of the *Native Title Act 1993* is not to right the wrongs of the past, nor to produce an outcome based on modern notions of justice, or to be 'politically correct'. The *Native Title Amendment Act 1998*, including John Howard's '10 point plan', did not become relevant since the case had been heard and judgement reserved before it came into being. The case was heard under the original *Native Title Act* of 1993.

The Yorta Yorta people are descendants of the original inhabitants of the land under application prior to non-Indigenous occupation in the 1840s. They represent the language groups/nations of the Bangerang/Pangerang, Pinegerines, Waveroo, Calthaba/Kailtheban, Moira, Walithica/Wollithiga/Wollithigan, Ulupna and Ngooraialum/Ooraialum. Of over 4500 applicants, 278 were 'selected' to represent the wider group. A smaller representative group was called to give evidence.

**Known ancestors**

In the determination, Justice Olney clearly sets out that it is the issue of connection to the inhabitants of the area under application in 1788 that is at the core of the case.

While attempting to determine whether or not the applicants could prove direct lineage to 18 'known ancestors', and by inference therefore to the original 1788 inhabitants, Justice Olney demonstrated a clear preference for documentary evidence, particularly that of non-Indigenous settlers, as opposed to the predominantly oral tradition of the applicants. We consider this to be the first major injustice of the determination. Even though he considered that the oral evidence was dependable, and much of the documentary evidence contradictory and obviously incomplete, he still favoured the written word. Surprisingly, when (non-Indigenous) experts were called to give opinions as to the missing documentation, their oral evidence was accepted.

The crucial determination of this part of the trial was that a genealogical connection to the original inhabitants could only be 'proven' in relation to two of the applicant families, which meant native title rights could at best exist only in those parts of the area under application that comprised the traditional country of their groups.

**Law and custom**

This part of the trial dealt with the nature of traditional laws and customs and whether they had been continuously practised in the area under application.

Justice Olney determined that there was a lack of evidence to suggest that traditional laws and customs had been continuously practised by descendants of either of the two ancestors found to have originated from the area under application. In making this finding, he appeared to give great weight to a petition signed in 1881 by some 42 Aboriginal petitioners, including children of those ancestors, asking for land to be granted them. Arguably under the influence of non-Indigenous 'advisors', they stated in the petition that their culture had been overcome by settlement. Justice Olney concluded that occupation of their traditional lands and observance of traditional laws and customs had therefore ceased for the purposes of contemporary native title legislation.

More specifically, he found that the present practices of fishing, hunting and food gathering were conducted on a recreational basis rather then a subsistence basis. Using as a reference the observations recorded in Edward Curr's book, *Recollections of Squatting in Victoria*, Justice Olney concluded that they are conducted in a way that does not represent a continuation of the traditional practices.

Sites regarded by the Yorta Yorta people as sacred, while significant now, were determined (by Justice Olney) to be not significant in the traditional culture, which did not require them to be preserved. He also determined that present burial practices were inconsistent with the

traditional laws and customs handed down from the original inhabitants. The right to exclude people from entering the area under application was also 'no longer exercised', and evidence regarding secret men's sites was 'not conclusive'.

In short, Justice Olney determined that though many of the current practices of the Yorta Yorta people were 'useful' and 'commendable', in the absence of a continuous link back to the laws and customs of the original inhabitants, native title rights no longer existed.

It is our contention that, in asking native title applicants to prove continuous cultural connection in this way, we are requiring of Aboriginal people something we do not require of anyone else; that is, for their culture to remain static and their customs to never change.

**Other issues**

Justice Olney also commented on issues relating to extinguishment. He was highly critical of the amount of time and money expended by the governments of New South Wales and Victoria, as well as numerous government and private agencies, in presenting evidence aimed at proving extinguishment, even before native title had been established. He went on to question the suitability of adversarial litigation for determining matters relating to native title.

We believe Justice Olney's criticisms highlight the need for a better understanding by the public of native title. Indeed, Justice Robert French, in stepping down as inaugural President of the National Native Title Tribunal, urged State and Commonwealth governments, as well as schools, to take a greater role in educating the public about native title, so that mediation could more often provide a more effective method of resolution.

**Conclusion**

The cultural connections of the Yorta Yorta people have **not** been washed away; they are still in evidence today in a modern context. If they have been diminished, it is not 'the tide of history' which has done it, but rather government policies, the deliberate acts of individuals and the inevitable impact of invasion. To pretend otherwise is dishonest. The use of such language perpetuates the myth of benign colonisation of the continent.

The Federal Court in the Yorta Yorta case has, in effect, acknowledged the systematic disempowerment and the attempted dispossession and genocide of the Yorta Yorta people. Remarkably, and against all odds, the evidence presented illustrates the strength and depth of their connection to land and continuity of presence in the area under application, from the first incursions of squatters until today.

Given that this is not a 'black armband' view of history but a Federal Court summary of Yorta Yorta history, we believe that the Olney decision does not provide justice. If this

judgement is in fact a correct reading of the law, it clearly indicates that the existing native title regime in Australia needs to be changed, in order to provide justice and equity for Indigenous people.

The full determination is available on the World Wide Web at
http://www.austlii.edu.au/au/cases/cth/federal_ct/1998/1606.html

*Felicity Say, Grace McCaughey, Doug Falconer, Jacqui Turnbull, David Perry, May 1999*

## Queensland

### Central Queensland – Registration Test

Five native title applications in Central Queensland have passed the new registration test, which was introduced with the amendments to the *Native Title Act 1993* last year. Passing the test ensures that applicants have the right to negotiate on mining projects in Central Queensland.

The Barada Barna Kabalbara and Yetimarla people (QC97/59) and the Darrumbal people (QC99/1) now have the right to negotiate over the Marlborough Nickel project. The Iman people (QC99/3), the Western Wakka Wakka people (QC99/4), and the Barunggam people (QC99/5) have gained the right to negotiate about the Kogan Coal Mine. The National Native Title Tribunal applied the test six applications. The applications are the first to undergo the new test in Queensland. Five were successful in achieving registration; one was unsuccessful.

Tribunal Registrar Mr Chris Doepel said the application of the registration test to these applications was fast-tracked because of the Queensland Government's notice of intention to grant mining tenements to Marlborough Nickel and the Kogan Coal Mine. The Tribunal will apply the registration test to a further 155 Queensland applications this year. Over 600 native title applications will undergo the test nationwide. (*NNTT Media Release, 4 Mar)**

### Dalungdalee People

In a letter to the Noosa Council, the Dalungdalee people informed the Council that it should have consulted with them over a ferry lease contract. The letter said that under the NTA commercial dealings with traditional lands and waters could not be carried out without input from the traditional owners. Council accountant, Mr David Thomas, said that he understood there was no native title application before the NNTT, although he believed there was a common law claim over the area. Mr Thomas said the Council's legal advice was that even if there were a valid native title application with the NNTT, the road to the ferry that goes right to the watermark, which would extinguish native title. Dalungdalee elder, John (Dalungda) Lee Jones, said that the Council's advice was wrong. (*Coolum and Noosa Citizen, 17 Mar, p3)**

### Meriam People

The Meriam people will use recent archaeological finds in a native title claim over waters surrounding the Murray Islands. Shellfish found in diggings of rubbish dumps were dated to confirm human occupation of more than 3200 years ago. (*CM, 27 Mar, p17)**

### Kangoulu People [NNTT Ref#QC99/6]

A second Kangoulu people's application has been lodged in the Federal Court in response to two Section 29 notices. It covers parcels of land around Emerald in Central Queensland. (*QNT, Apr, p1)*

### Juunyjuwarra People [NNTT Ref#QC99/7]

The Juunyjuwarra people's application has been lodged in the Federal Court in response to a Section 29 notice. It covers areas within the Munburra Resources Reserve, near Hopevale, Far North Queensland. (*QNT, Apr, p1)*

### Wanggumara People [NNTT Ref#QC99/8]

A third Wanggumara people's application has been lodged in the Federal Court in response to a Section 29 notice in the Keeroongooloo area. It covers lot 3000 on Pastoral Holding 762, also known as Cooma Holding, in the Shire of Quilpie, south-west Queensland. (*QNT, Apr, p1)*

### Yulluna People [NNTT Ref#QC99/9]

The Yulluna people's application has been lodged in the Federal Court in response to a Section 29 notice. The application covers specific lots (including pastoral leases, reserves, unallocated State land and other State land) south of Mt Isa in north-west Queensland. (*QNT, Apr, p1)*

### Kalkadoon People [NNTT Ref#QC99/10]

A fifth Kalkadoon people's application has been lodged in the Federal Court. It covers an area north and south of Mt Isa in north-west Queensland, including the towns of Malbon, Dajarra, Duchess and Gunpowder. (*QNT, Apr, p1)*

### Maiwali and Karuwali People [NNTT Ref#QC99/11]

A second Maiwali and Karuwali peoples' application has been lodged in the Federal Court. The application covers specific lots (including pastoral leases, national parks, State forests, State land and reserves) in Winton, Diamantina and Barcoo Shires in north-west Queensland. (*QNT, Apr, p1)*

### Western Yalanji People [NNTT Ref#QC99/12]

A fourth Western Yalanji people's application has been lodged in the Federal Court in response to a Section 29 notice. It covers an south of Laura and south-west of Cooktown in Far North Queensland. (*QNT, Apr, p1)*

### Ewamian People [NNTT Ref#QC99/13]

A second Ewamian people's application has been lodged in the Federal Court in response to a Section 29 notice. It covers an area around Georgetown in Far North Queensland. (*QNT, Apr, p1)*

### Woolgar People [NNTT Ref#QC99/14]

The Woolgar group's application has been lodged in the Federal Court. It covers Middle Park Pastoral Holding north of Richmond in Central Queensland. (*QNT, Apr, p1)*

## South Australia

### Coulthard-Adnyamathanha [NNTT Ref#SC94/1]

A 72 000 square kilometre native title application in the Flinders Ranges has become the first in South Australia to pass the registration test under new Commonwealth native title laws. National Native Title Tribunal Senior Officer, Mr Hugh Chevis, said the Adnyamathanha people lodged a united native title application in January this year, bringing together five overlapping applications in the region.

The first Adnyamathanha application was lodged in October 1994 and was accepted by the Tribunal in May 1995. Amendments to the application made in January 1999 included changes to the native title rights and interests claimed. The Tribunal will apply the test to a further 31 applications in South Australia this year. (*NNTT Media Release, 30 Mar)**

## Western Australia

### Wongatha People [NNTT Ref#WC94/8]

A 220 000 square kilometre north-east Goldfields native title application has become the first in Western Australia to pass the stringent registration test under new Commonwealth native title laws. National Native Title Tribunal Registrar Chris Doepel said the Wongatha application, which was created last month through the combination of 20 separate native title applications, had met all the test criteria.

Mr Doepel said the applicants, assisted by the Goldfields Land Council, had put considerable effort into meeting the requirements of the test. The decision of the applicants to unite in a

single application had eliminated many overlaps and was likely to make native title negotiations more manageable for all parties. (*NNTT Media Release, 26 Feb)**

### Ngadju People [NNTT Ref#WC99/2]

A 100 000 square kilometre southern Goldfields native title application has passed the registration test under new Commonwealth native title laws. The Ngadju people will retain the right to negotiate. Due to the State Government announcing its intention to grant some mining tenements in the area, the process was accelerated. (*Kalgoorlie Miner, 9 Mar, p3)*

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

The Western Australian and the Northern Territory Governments' application to have their appeal against the Federal Court's Miriuwung Gajerrong decision heard in the High Court, has been rejected. (*Age, 13 Mar, p15)**

### Goldfields

The out-going acting director of the Goldfields Land Council, Mr Chris Marshall, said the State Government should move towards a consent determination of native title in areas where native title applications had satisfied the requirements of the registration test. (*Kalgoorlie Miner, 24 Mar, p7)*

### Koara People [NNTT Ref#WC95/1]

A group of six native title applications in the north-west Goldfields which combined to form the single Koara application, has passed the new registration test. National Native Title Tribunal senior officer, Hugh Chevis, said the application - encompassing Leonora and Leinster - met all criteria in the registration test.

The Koara application was the fourth Goldfields application to face the test. The Wongatha application in the north east and the Ngadju application in the south had also been successful. The Bullenbuk Noongar application in the southern Goldfields recently failed the registration test. (*NNTT Media Release, 25 Mar)**

### Wong-goo-tt-oo [NNTT Ref#WC98/40], Yaburara & Mardudhunera People [NNTT Ref#WC96/89]

Two Pilbara native title applications have passed the new registration test, retaining the right to negotiate about mining projects in the region. The National Native Title Tribunal has applied the test to the Wong-goo-tt-oo application in the Fortesque River area, and to the Yaburara and Mardudhunera peoples' application in the Dampier area of the Pilbara.

The 13 940 square kilometre Yaburara and Mardudhunera peoples' application was lodged in August 1996. It was referred by the Tribunal to the Federal Court for litigation in November 1997 when a mediated outcome could not be reached. The 20 240 square kilometre Wong-goo-tt-oo application was lodged in July 1998. (*NNTT Media Release, 13 Apr)*

### South West Boojarah [NNTT Ref#WC98/63]

The Boojarah native title application, which unites 14 Aboriginal groups, has passed the registration test put in place by recent amendments to the NTA. (*WA, 14 Apr, p30)*

### Perth region

The Federal Court has accepted a new native title application, formed from an amalgamation of applications by Robert Bropho, William Warrell, Gregory Garlett and Richard Wilkes, in the Perth region. The application will now face the new registration test. (*WA, 14 Apr, p30)*

### Pandawn Descendants [NNTT Ref#WC96/83]

One of Western Australia's largest native title applications has been unsuccessful in retaining the right to have a say on mining projects. National Native Title Tribunal Registrar, Chris

Doepel, said the Pandawn application had been unsuccessful in meeting all the criteria in the registration test.

The application failed on six grounds including that it did not demonstrate traditional physical association with the area under application and did not show that the applicants had maintained native title in accordance with any traditional laws and customs. Mr Doepel said the test, introduced as part of amendments to the *Native Title Act* in 1998, determined which native title applicants had the right to have a say over proposed mining, exploration and some other developments in the area where their native title application was pending.

To date, the registration test had been applied to 28 native title applications in Western Australia, 15 of which had passed and 13 were unsuccessful. Mr Doepel said the applicants could appeal the Tribunal's decision. (*NNTT Media Release, 28 Apr)**

### Mullewa Wadjari Community [NNTT Ref#WC96/93]

A native title application in the mid-west of the State has passed the registration test under the amended NTA. National Native Title Tribunal Registrar, Chris Doepel, said the Mullewa Wadjari application, extending east from Geraldton, met all criteria in the test. Mr Doepel said this means that the Mullewa Wadjari people will maintain the right to have a say over - but not veto - proposed mining, exploration and some other developments in the area while their native title application is pending. (*NNTT Media Release, 30 Apr)*

## MINING AND NATURAL RESOURCES

### Commonwealth

### Notification of Mining Rights

The Commonwealth has notified the public about intermediate period acts consisting of the creation of a right to mine or the renewal and/or extension of the period for which such a right has effect. Intermediate period acts are those which took place between the period 1 January 1994 (commencement of the NTA) and 23 December 1996 (the *Wik* decision).. Under the NTA as amended, these acts are validated. Details of grants and renewals can be found on the following website: http://www.dpie.gov.au/resources.energy/nativetitle/index.html. For further information, contact the Department of Industry, Science and Resources through Mr John Thompson on phone (02) 7272 4456, fax (02) 6272 4890; or Mr Peter Smith on phone (02) 6272 5707, fax (02) 6272 4137. (*QNT, Apr, p3), (DPIE website)*

### Beverley Uranium Mine

A media release organised by the Jabiluka Action Group and Nuclear Issues Coalition, states that the Adnyamathanha community of the Northern Flinders Ranges have consistently opposed uranium mining in the Flinders Ranges since the 1950s. According to the Chairperson of the Adnyamathanha Native Title Management Committee (ANTMC), native title agreements over the area were signed under duress in August 1998. The Chairperson says that the process of consultation was denied to the native title applicants throughout the Environmental Impact Statement because Heathgate Resources were threatening court action if the ANTMC failed to sign an agreement half way through the two month public consultation period. (*Media Release, 19 Mar)*

Commonwealth Environment Minister, Senator Robert Hill, has responded to concerns raised by the Adnyamathanha community about the Beverley uranium mine, saying he would like the mine to proceed. He said the agreement that Heathgate Resources secured with

Indigenous people is regarded as very positive. Senator Hill said his understanding is that the Aboriginal community has been very supportive and only a small number of people are disputing that. *(CT, 5 Apr, p18)*

The Minister for Industry, Science and Resources, Senator Nick Minchin, has announced that the Commonwealth Government has cleared the way for Heathgate Resources to proceed with its Beverley uranium mine project. *(Media Release, 30 Apr)*

## Queensland

### Notification of Mining Rights

The Queensland State Government has notified the public about intermediate period acts consisting of the creation of a right to mine or the renewal and/or extension of the period for which such a right has effect. Intermediate period acts are those which took place between the period 1 January 1994 (commencement of the NTA) and 23 December 1996 (the *Wik* decision). Under the amended Commonwealth and State Native Title Acts these acts are validated. Details of grants and renewals can be found on the following website: http://www.premiers.qld.gov.au/about/nativetitle/homepage.html. For information contact the relevant departmental contact officer. Further queries to Native Title Services on freecall 1800 500 037. (*QNT, Apr, p4)*

## South Australia

### Government Task Force

The South Australian Government has set up a task force aimed at minimising delay to new mining projects. The Premier, Mr Olsen, sited native title as a major cause of delay. Industry figure, Mr Richard Ryan, will head the task force with other members to be decided by the industry. The task force will reprimand Government departments that cause a delay to new projects of more than two weeks. The task force's first report on an inquiry into the industry is due in September. (*Ad, 6 Mar, p39)*

## Western Australia

### Murrin Murrin Nickel Project

The National Native Title Tribunal has cleared the way for the grant of eight mineral tenements to Anaconda Nickel Limited for the expansion of the Murrin Murrin nickel project between Leonora and Laverton. Tribunal Member, Hon Chris Sumner, ruled that the tenements could be granted with some conditions to protect the interests of the Bibila Lungkutjarra people.

On 18 May 1998, the Tribunal was asked to decide the matter after Anaconda Ltd was unsuccessful in negotiating an agreement, which included all seven native title parties with an interest in the tenement areas. Thirty other tenements had already been granted by agreement with native title applicants. The eight tenements, ranging in size from 62 to 759 hectares, were for the extraction of ore and involved significant excavation of the land.

Conditions included:

- giving the Bibila Lungkutjarra people unlimited rights of access to the tenements except in parts where mining or exploration was underway;
- protection of sites of cultural significance; and
- keeping the Bibila Lungkutjarra people informed on the details of the mining project, including environmental monitoring.

The Tribunal concluded that the six other native title parties had already effectively given their approval to the grant of the tenements in earlier agreements negotiated with the company. A series of other tenements for Stage II of the Murrin Murrin project remained before the Tribunal for a decision on whether they could be granted.

In this decision, Mr Sumner said it was his firm opinion that the interests of all parties would be served by further negotiation. He said that outstanding issues under the various agreements could be addressed and importantly a mechanism found for Anaconda to realise its commitment to pay a substantial sum per annum into a charitable trust.

The Tribunal conducted hearings and detailed inquiries in Perth and Leonora, including a visit to the Murrin Murrin plant site, the general areas of the proposed mining leases and other areas of interest to native title parties. (*NNTT Media Release, 19 Mar)*

# AGREEMENTS

## International

### Nunavut

A new territory has been formed in Canada after agreement between the Canadian Government and the Inuit people. The territory of Nunavut, which came in to being on 1 April 1999, covers around two million square kilometres of Canada's Northwest Territories. (*SMH, 2 Apr, p4)** Under the agreement, the Inuit will have absolute title to areas of land totalling 350 000 square kilometres. Within areas totalling 10 per cent of that land, the Inuit will have rights to minerals. The agreement also includes funding that the Inuit will use to fund business, to provide student scholarships and hunting equipment. There is also provision for a training trust fund from federal government royalties from mining on Crown lands. The key institutions of the territory will have half their members from Inuit people with the other half being appointed by the Canadian and Nunavut governments. The Nunavut Government is expected to be representative of the territory's population, with more than 85 per cent being Inuit. As part of the agreement, the Inuit surrendered 'any claims, rights, title and interests based on their assertion of an aboriginal title'. (*Aus,5 Apr, p36)*

## New South Wales

### Adelong Area Agreement

Australia's first Indigenous land use agreement under the amended NTA, moves into public notification today. The Area Agreement between Adelong Consolidated Gold Mines NL, the NSW Aboriginal Land Council and representatives of the Walgalu and Wiradjuri people in the Tumut and Adelong area of NSW, was the first lodged for registration with the National Native Title Tribunal. Tribunal Registrar Mr Chris Doepel said under the amended NTA, the process of registration with the Tribunal ensures that the Agreement has contractual force.

The NSW Aboriginal Land Council - as the Native Title Representative Body - has certified the Adelong Area Agreement, saying it undertook a consultation process to identify the potential native title holders in the area and obtained their authorisation for the Agreement. The Tribunal has placed advertisements about registration of the Adelong Area Agreement in national, state and local newspapers. The advertisements say people who claim to have native title to the area have until 9 June to lodge an objection to registration of the Agreement.

Under the terms of the Agreement, representatives of the Walgalu and Wiradjuri people consent to mining operations by Adelong Consolidated Gold Mines in the area. The agreement also includes the transfer of shares to the Aboriginal community, employment opportunities, cultural heritage protection and environmental monitoring. (*NNTT Media Release, 10 Mar)*

### Hillgrove Mining

The Dunghutti, Anaiwan and Gumbayngirr peoples, Hillgrove Mining and the NSW Department of Mineral Resources have struck an agreement that allows for Hillgrove to expand and for scholarships and employment opportunities for local Aboriginal people. Compensation to traditional owners under the agreement also includes site beautification. The package will be monitored by a group with representatives from each Aboriginal Nation and from Hillgrove Mining. (*Land Rights Queensland, March, p3).*

### Wollongong University – Satellite Campus

An agreement between the Jerinaga and Wreck Bay Aboriginal communities and the University of Wollongong has paved the way for the construction of a satellite campus of the University at Nowra. The agreement gave special permission for acquisition of the site. The campus will constitute stage one of the South Coast Educational Network, which plans to make education more accessible. (*Aus, 10 Mar, p46)*

### National Parks Framework Agreement

The New South Wales Government and the NSW Aboriginal Land Council have signed a framework agreement that recognises that Aboriginal rights may exist in around 700 000 hectares of land in the 151 national parks created by the Government. Under the framework agreement, native title applicants could negotiate smaller agreements that could lead to such things as joint management of a national park, employment, and a role in tourism ventures. (*SMH, 11 Mar, p3)*

### Wellington Common

Wellington Common will be handed over to Aboriginal people if an agreement between Wiradjuri representatives and the Wellington Council goes ahead. The five parties involved are expected to finalise the agreement next week. The land will then be handed over by the State Government as freehold title. The council wish to maintain public access to the Macquarie River, which runs past the common, and seek to guarantee that certain roads will remain open to the public. The Wiradjuri native title applicants wish to use part of the land to build tourist accommodation to provide an economic base and employment opportunities. (*SMH, 20 Mar, p8)*

## Queensland

### Moorgumpin (Moreton Island)

Traditional owners of Moorgumpin (or Moreton Island) and the Brisbane City Council, have signed a symbolic agreement in which the Council recognises traditional ownership. According to Brisbane Lord Mayor, Jim Soorley, the agreement is an 'important and binding understanding that Council will continue to consult with the Quandamooka Land Council on issues relating to the future of the island'. The agreement, which is non-binding, represents a two year period of discussions. It lays the ground-work for cooperative initiatives that will help to protect the Island's natural and cultural heritage. There is a clause in the agreement encouraging the Queensland State Government to proceed with a determination of native title. (*Land Rights Queensland, March, p3).*

### Indigenous Land Use Agreements, Mackay

Two Indigenous land use agreements over areas in Mackay, Central Queensland, have been

lodged at the NNTT in Brisbane. The two agreements seeking registration are as follows:

1. Mackay Harbour Beach Park. The agreement is around the gazettal of land in the Beach area to the Mackay City Council for the purpose of developing park and recreation facilities.
2. Mackay Surf Lifesaving Club. The agreement is around leasing land in the Beach area to the Lifesaving Club for the purpose of a new clubhouse and facilities.

The requesting party to the agreements is the State of Queensland with other parties being; the Birri Gubba people, the Wiri/Yuwiburra people, the Yuibera people, the Wirri/Yuwiburra and the Mackay City Council. (*QNT, Apr, p3)** The agreements do not extinguish native title. (*Daily Mercury, 6 Mar, p3)*

### Hummock Hill Island – Launch System

Negotiations have started over a proposed space station site on Hummock Hill Island. United Launch System International and the Gurang Land Council, who are negotiating on behalf of traditional owners, are understood to be holding discussions over access to land, education opportunities and employment. The negotiations are following a formal process set out under the NTA. *(The Observer, 24 Apr, p5)*

## Tasmania

### Wybalenna

At a ceremony in Wybalenna on Flinders Island, Tasmanian Premier, Mr Jim Bacon, presented letters of agreement that hand back Wybalenna land to Aboriginal people. (*SMH, 1 Mar, p4)** The agreement settles Australia's oldest Aboriginal land claim, first petitioned with Queen Victoria in 1845. (*Ad, 1 Mar, p15)**

Tasmanian Justice and Industrial Relations Department secretary, Mr Richard Bingham, is to chair a working party set up to negotiate a range of issues with the Aboriginal community. The working party will conduct negotiations aimed at the return of parcels of land to the Aboriginal community. (*Mer, 19 Mar, p7)**

The Aboriginal community on Flinders Island has been officially handed the title deeds of Wybalenna. Title will be held by the Aboriginal Land Council of Tasmania, with the site to be managed by a committee from the Flinders Island Aboriginal Association. (*Mer, 19 Apr, p5)**

## Northern Territory

### Indigenous Land Use Agreement - Katherine

The National Native Title Tribunal has moved to register the Northern Territory's first Indigenous land use agreement under new Commonwealth native title laws. Tribunal Registrar, Chris Doepel, said he had agreed to public notification of an application to register the agreement over Crown land near Katherine. The land was known locally as the 'Venn Blocks', and 'Warlangluk' by the traditional owners.

Mr Doepel said the agreement involved the Jawoyn native title holders agreeing to the extinguishment of native title rights and interests over the land so it could be subdivided by the Northern Territory Land Corporation for horticultural projects. In return, a newly created Warlangluk Aboriginal Corporation would receive freehold title to a 16 hectare site in the same area, adjacent to the Stuart Highway and about 20 kilometres south of Katherine. The freehold land would be used by Kalano Community Association for an alcohol rehabilitation facility, and other community purposes.

Under the agreement, the Northern Land Council has also agreed to withdraw a land rights claim over the horticultural land. The claim was lodged just prior to the June 1997 sunset clause of the *Aboriginal Land Rights (Northern Territory) Act 1976*. Parties to the Agreement were the land claimants, the native title group (comprising the Northern Land Council), the Jawoyn Association, the NT Land Corporation and the Northern Territory Government.

Negotiations over the agreement received national publicity last year when the traditional owners sought to include the provision of renal dialysis machines as part of the agreement. Since then, the Northern Territory Government has committed to providing renal dialysis facilities in Katherine and they no longer form part of the agreement. If there are no objections, the Agreement will be formally registered in July. (*NNTT Media Release, 7 Apr)*

## AMENDMENTS

### Queensland

The Queensland State Parliament has passed legislation to set up a land and resources tribunal that will oversee the granting of mining leases in the State. This is the third stage of the Government's native title regime. The tribunal will report to Parliament with the mining Minister having the power to overturn tribunal decisions. The tribunal will also take over the functions of the State's Mining Warden's Court. (*Aus, 11 Mar, p2)*

The Commonwealth Government has asked the Queensland Government to amend recently passed State native title legislation. The Australian Democrat's spokesperson on Indigenous affairs, Senator John Woodley, has asked Queensland Premier Peter Beattie to forward the proposed amendments to him. In a letter to the Premier, Senator Woodley stated that Federal Parliament retains a veto over State native title legislation, a veto which effectively lies with the Senate. Senator Woodley said he understands that there are around 250 amendments being proposed by the Commonwealth. He said the Democrats would not support any Commonwealth amendment that would water down Indigenous rights when the legislation comes before the Senate. (*Senator Woodley - Media Release, 22 Apr)*

### Western Australia

Influential figures in the Western Australian Labor Party are working on three different and conflicting compromises on the Government's proposed native title legislation as follows:

1. Deputy Leader, Eric Ripper, is negotiating with the Premier's Office to find common ground;
2. MPs Julian Grill and Mark Nevill have presented the Opposition Leader with a package worked out with the Government's native title advisor John Clarke. The package would validate leases in line with the Government's proposed Validation Bill, compromising to exclude historical and expired leases other than pastoral leases; and
3. senior factional figures have proposed a back down on opposition to the Government's proposed State Native Title Commission. (*WA, 3 Mar, p10)**

Opposition Leader, Dr Geoff Gallop, rejected the proposed compromises saying that the Labor Party would not back down on its principles on native title rights for apparent political gain. He also made it clear that factional powerbrokers and other heavy-weights would not be allowed to dictate to the Labor Party. (*WA, 5 March, p10)**

Labor Leader, Dr Geoff Gallop, has suggested a compromise to the Government's proposed native title legislation, which would involve setting up a committee to adjudicate on the extinguishment of native title over leasehold land. Under the plan, the Government would accept Labor amendments to legislation to validate around 9000 possibly invalid leases and extinguish native title on a further 2500 leases. The amendments would allow for the validation of more than 9000 leases, while the contentious leases over which the Government was to extinguish native title would be considered on a case by case basis, deciding where native title had been previously extinguished. Dr Gallop proposed that the committee include an Aboriginal representative. (*WA, 8 Mar, p8)**

The State Government has rejected Labor amendments to the Government's proposed legislation on native title. (*WA, 10 Mar, p10)**

The State Government has accepted Labor Party amendments to their native title legislation. Premier Richard Court told Parliament that the Government would allow passage of the validation bill, despite disagreeing with Opposition amendments. Mr Court said that the Labor amendments leave 1300 leaseholders exposed to possible native title litigation. He said the Government would try to introduce new legislation to protect those leaseholders. (*Aus, 21 Apr, p6)** Opposition leader, Dr Geoff Gallop, said the amended legislation was balanced, treating all property rights holders equally. The legislation will validate around 9000 leases that were issued between the enactment of the NTA in 1994 and the High Court's *Wik* decision in 1996. (*FinR, 22 Apr, p4)**

### Northern Territory

The Northern Territory has requested three section 43A determinations for future acts under Northern Territory mining, lands acquisition and petroleum legislation. This is the first State or Territory alternative to the 'right to negotiate' to be formally considered since the amendments to the Act commenced on 30 September 1998. The Commonwealth Attorney-General is required to notify, invite and consider any submissions made by the Representative Bodies concerned. Closing date for submissions is 6 April 1999. (*Attorney-General Media Release, 2 Mar)*

The Commonwealth Attorney-General, the Hon. Daryl Williams, has determined that the Northern Territory's alternative regimes to replace certain provisions of the NTA comply with the requirements of that Act. The Attorney-General made three determinations in respect of the Northern Territory mining, lands acquisition and petroleum legislation to apply on pastoral lease and reserve land, after considering the criteria in section 43A of the NTA and submissions provided by the Central Land Council and the Northern Land Council. *(Attorney-General Media Release, 27 Apr)*

## GENERAL NATIVE TITLE ISSUES

### International

Mr Michael Anderson, chair of the Euahlai native title claim group, addressed the German Greens Party National Conference on 7 March 1999. Mr Anderson addressed the delegates on issues relating to Indigenous rights, saying that the original NTA and the amendments to the NTA are seen by Aboriginal peoples as validating land titles for non-Indigenous people but Aboriginal peoples have never ceded any of their land and still hold sovereign title. He also told the conference that the amendments had given mining companies a 'statutory

guarantee of carte blanche access to mineral wealth on Aboriginal land'. (*Age, 9 Mar, pA3), (Media Release - Michael Anderson)**

## United Nations Committee on the Elimination of Racial Discrimination

The ATSIC submission to the United Nations Committee on the Elimination of Racial Discrimination ('the Committee') will be presented to the Committee. ATSIC commissioners Colin Dillon and Geoff Clark will brief the Committee in an informal session. (*CM, 11 Mar, p6) The Aboriginal and Torres Strait Islander Peoples and Australia's Obligations under the United Nations Convention on the Elimination of all Forms of Racial Discrimination: a Report Submitted by the Aboriginal and Torres Strait Islander Commission to the United Nations Committee on the Elimination of Racial Discrimination,* can be found on ATSIC's website at: http://www.atsic.gov.au/

On 12 March 1999, the Deputy General Counsel from the Attorney-General's Department, Mr Robert Orr, will appear before the Committee in response to their request for information about changes to the NTA, the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner, and changes to land rights policy, in August 1998. (*Media Release, Attorney-General, 11 Mar, p1)**

Members of the Committee have strongly criticised the Australian Government's native title legislation, noting that recent policies seemed to put Australia in breach of international conventions. The members said that the amendments to the NTA appeared to impair Indigenous peoples' claims to land. They suggested that the Government could be perpetuating inequality amongst Indigenous peoples and condemned the Government for what appeared to be lack of consultation with Indigenous peoples over key decisions. (*SMH, 15 Mar, p2)** Mr Heinz Schumann-Zeitel, from Amnesty International, expressed disappointment that Mr Robert Orr, the Attorney-General Department's deputy general counsel, had not tried to explain the NTA amendments in terms of Australia's responsibilities under the Convention on the Elimination of All Forms of Racial Discrimination and as such, was not speaking the 'language of the committee'. (*FinR, 15 Mar, p5)**

The Australian Government has denied that is native title legislation breached international treaty obligations. (*SMH, 16 Mar, p3)**

The 18-member Committee has handed down a finding that Australia's amended native title legislation is racially discriminatory. It raised serious concern that the creation of legal certainty for governments and third parties came at the expense of Indigenous title. The Committee also expressed concern over the Government's lack of consultation with Indigenous people over their amendments to the NTA. The committee recommended that the Government suspend the implementation of the legislation. (*CT, 20 Mar, p3)** The Committee has decided to keep the matter on their agenda under 'early warning and action' procedures. (*Aus, 20 Mar, p3)* A copy of the finding is printed on the following pages.

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
54TH SESSION
1-19 March 1999

18 March 1999
Unedited version

# AUSTRALIA

## Decision

1. Acting under its early warning procedures, the Committee adopted Decision 1(53) on Australia on 11 August 1998 (A/53/18, para. 22), requesting information from the State Party regarding three areas of concern: proposed changes to the 1993 Native Title Act; changes of policy as to Aboriginal land rights; and changes in the position or function of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Committee welcomes the full and thorough reply of the Commonwealth Government of Australia to this request for information (CERD/C/347). The Committee also appreciates the dialogue with the delegation from the State party at the Committee's 1323rd and 1324th meetings to respond to additional questions posed by the Committee in regard to the State Party's submission.

2. The Committee received similarly detailed and useful comments from the Acting Aboriginal and Torres and Strait Islander Social Justice Commissioner of the Australian Human Rights and Equal Opportunity Commission; the Aboriginal and Torres Strait Islander Commission; members of the Parliament and Senate of Australia.

3. The Committee recognizes that within the broad range of discriminatory practices that have long been directed against Australia's Aboriginal and Torres Strait Islander peoples, the effects of Australia's racially discriminatory land practices have endured as an acute impairment of the rights of Australia's indigenous communities.

4. The Committee recognizes further that the land rights of indigenous peoples are unique and encompass a traditional and cultural identification of the indigenous peoples with their land that has been generally recognized.

5. In its last Concluding Observations on the previous report of Australia, the Committee welcomed the attention paid by the Australian judiciary to the implementation of the Convention. (A/49/18, para. 540) The Committee also welcomed the decision of the High Court of Australia in the case of Mabo v. Queensland, noting that in recognizing the survival of indigenous title to land where such title had not otherwise been validly extinguished, the High Court case constituted a significant development in the recognition of Indigenous rights under the Convention. The Committee welcomed, further, the Native Title Act of 1993, which provided a framework for the continued recognition of indigenous land rights following the precedent established in the Mabo case.

6. The Committee, having considered a series of new amendments to the Native Title Act, as adopted in 1998, expresses concern over the compatibility of the Native Title Act, as currently amended, with the State Party's international obligations under the Convention.

While the original Native Title Act recognizes and seeks to protect indigenous title, provisions that extinguish or impair the exercise of indigenous title rights and interests pervade the amended Act. While the original 1993 Native Title Act was delicately balanced between the rights of indigenous and non-indigenous title holders, the amended Act appears to create legal certainty for governments and third parties at the expense of indigenous title.

7. The Committee notes, in particular, four specific provisions that discriminate against indigenous title-holders under the newly amended Act. These include: the Act's 'validation' provisions; the 'confirmation of extinguishment' provisions; the primary production upgrade provisions; and restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses.

8. These provisions raise concerns that the amended Act appears to wind back the protections of indigenous title offered in the Mabo decision of the High Court of Australia and the 1993 Native Title Act. As such, the amended Act cannot be considered to be a special measure within the meaning of Articles 1(4) and 2(2) of the Convention and raises concerns about the State Party's compliance with Articles 2 and 5 of the Convention.

9. The lack of effective participation by indigenous communities in the formulation of the amendments also raises concerns with respect to the State Party's compliance with its obligations under Article 5(c) of the Convention. Calling upon States Parties to 'recognise and protect the rights of indigenous peoples to own, develop, control and use their common lands, territories and resources,' the Committee , in its General Recommendation XXIII, stressed the importance of ensuring 'that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.'

10. While welcoming the State Party's recognition of the important role that has been played by the Human Rights and Equal Opportunity Commission, the Committee also notes with concern the State Party's proposed changes to the overall structure of the Commission; abolishing the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner and assigning those functions to a generalist Deputy President. The Committee strongly encourages the State Party to consider all possible effects of such a restructuring, including whether the new Deputy President would have sufficient opportunity to address in an adequate manner the full range of issues regarding indigenous peoples warranting attention. Consideration should be given to the additional benefits of an appropriately qualified specialist position to address these matters, given the continuing political, economic and social marginalisation of the indigenous community of Australia.

11. The Committee calls on the State Party to address these concerns as a matter of utmost urgency. Most importantly, in conformity with the Committee's General Recommendation XXIII concerning Indigenous Peoples, the Committee urges the State Party to suspend implementation of the 1998 amendments and re-open discussions with the representatives of the Aboriginal and Torres Strait Islander peoples with a view to finding solutions acceptable to the indigenous peoples and which would comply with Australia's obligations under the Convention.

12. In light of the urgency and fundamental importance of these matters, and taking into account the willingness expressed by the State Party to continue the dialogue with the Committee over these provisions, the Committee decides to keep this matter on its agenda under its early warning and urgent action procedures to be reviewed again at its fifty-fifth session.

The Commonwealth Attorney-General, Mr Daryl Williams, says the Government does not agree with the conclusions reached by the Committee on the Elimination of all Forms of Racial Discrimination. He says the Committee's comments are an insult to Australia and all Australians as they are unbalanced and do not refer to the submission made by Australia on the native title issue. He said that the comments by the Committee fail to understand Australia's system of democracy. Mr Williams expressed disappointment that the Committee has decided that the issue should remain on its agenda. (*Media Release – Attorney-General, 19 Mar)**

Shadow Attorney-General, Mr Robert McClelland, said the finding by the Committee is extremely embarrassing for all Australians. Mr McClelland called on the Government to sit down with all stake holders, in particular with Indigenous peoples, to come up with a response to native title that respects the rights of everyone with an interest in the land. (*Media Release – Shadow Attorney-General, 19 Mar)** Mr McClelland said that the Labor Party has given notice that it will seek to establish a Senate Inquiry into whether the Government's amendments to the NTA breach Australia's international legal obligations. (*Media Release, 24 Mar)** The inquiry would be undertaken by the Legal and Constitutional References Committee. (*Aus, 26 Mar, p6)*

The Government has refused to support Labor's motion to refer its amendments to the NTA to a Parliamentary Committee. *(Shadow Attorney-General Media Release, 29 Mar)*

## National

Queensland Land Tribunal Chairman Graeme Neate has been sworn in as the new President of the National Native Title Tribunal in a brief ceremony in Perth. Mr Neate, who has an extensive background in Aboriginal, constitutional and environmental law issues, succeeds Justice Robert French who has resumed full time duties as a Federal Court judge.

A part time Member of the Tribunal since 1995, Mr Neate's appointment was made possible following amendments to the Native Title Act in 1998 which allowed lawyers other than members of the judiciary, or retired Judges, to head the Tribunal. Speaking after his swearing in by Justice French, Mr Neate said he intended to build on the achievements of his predecessor who guided the Tribunal and the native title process through a period of highly charged public and political debate. He said he plans to pursue the Tribunal's primary aim of assisting parties to native title applications to reach voluntary agreements as an alternative to costly, time consuming and adversarial litigation.

Mr Neate said he plans to work closely with State and Territory governments as they establish their own native title regimes to take over part of the Tribunal's functions, or, as in the case of Western Australia, all of the Tribunal's role. (*NNTT Media Release, 2 Mar)*

Dr William Jonas has been appointed to the position of Aboriginal Social Justice Commissioner. Dr Jonas is an Aboriginal academic and the director of the National Museum of Australia. The position of Social Justice Commissioner has been vacant for the last 14 months. The former Social Justice Commissioner, Mr Mick Dodson, retired from the position in January 1998. The appointment comes as the United Nations Committee on the Elimination of Racial Discrimination is due to begin its hearing into Australia's record on Aboriginal rights. The committee was concerned about the position of the Social Justice Commissioner. (*SMH, 4 Mar, p3)*

ATSIC Chairperson, Mr Gatjil Djerrkura, has told the Parliamentary Joint Committee on Native Title that it should focus its efforts on examining the impact of the extinguishment of native title and the workability problems emerging from the amended NTA. He also suggested the Committee focus on the impairment of native title rights and the effect of the NTA on land management. Mr Djerrkura said that the question of whether the amended NTA is leading to greater involvement of Indigenous people in land management where native title still survives, should be examined. (*ATSIC Media Release, 12 Mar)* ATSIC's submission to the Section 206(D) Inquiry of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund can be found on ATSIC's website at: http://www.atsic.gov.au/

The Prime Minister, Mr John Howard, has released his draft preamble to the Australian Constitution to the public. The draft states that 'since time immemorial, our land has been inhabited by Aborigines and Torres Strait Islanders, who are honoured for their ancient and continuing cultures'. Indigenous spokespeople have rejected the draft as it fails to acknowledge Indigenous Australians as the original owners of Australia. Neither does it acknowledge Indigenous rights to land as recognised in the High Court's *Mabo* and *Wik* decisions. (*Aus, 24 Mar, p5)**

The Australian Democrats say the preamble should acknowledge the status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of the land, and their continuing rights by virtue of that status. (*Media Release – Senator Stott Despoja, 23 Mar)*

The Labor Party says it is necessary for the preamble to recognise the custodianship of Indigenous peoples in some form. (*Aus, 24 Mar, p1)* Shadow Attorney-General, Mr Robert McClelland, said that the Constitutional Convention had unanimously endorsed the acknowledgement of the original Indigenous occupancy and custodianship of Australia in their debate on the preamble. (*Media Release, 24 Mar)*

The Government has not re-appointed Mr Michael McDaniel, an Aboriginal member of the NNTT, despite recommendations to do so from both the former NNTT President, Justice Robert French, and current President, Mr Graeme Neate. Mr McDaniel is an academic. The Government's decision has come under criticism from ATSIC Commissioner, Mr Geoff Clark, who is writing to the Attorney-General to ask for an explanation. The decision leaves the NNTT with just one Indigenous Member out of 16, with the Howard Government not having appointed any Indigenous Members. Mr Clark is particularly concerned that there be Indigenous participation in the decision-making of the Tribunal. He sites the amount of evidence that is oral history, saying Indigenous people have the skill to understand the weight of such evidence. (*SMH, 29 Mar, p4)*

A survey of public opinion on native title commissioned by the Western Australian, Queensland and Northern Territory Governments, cost more than $160 000. The survey, conducted last year, was to determine community concerns about issues of native title, raised in response to the High Court's *Wik* decision. Western Australian Premier, Mr Richard Court, has agreed to table the information in Parliament. (*WA, 31 Mar, p4)** Findings from the survey indicated that, of those surveyed, more than three-quarters wanted to know more about native title, recommending that less emotive language be used to communicate issues arising from the *Wik* decision. (*WA, 15 Apr, p34)*

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund will meet to decide on a course of action to use in gathering evidence from native title applicants in the remote Kimberley region of Western Australia. The Committee has been criticised for their decision to hold a session in Broome without taking evidence in remote areas of the Kimberley. In preference, the Committee has asked for written submissions or teleconferencing, refusing to pay for representatives of language groups to make the trip to Broome to give evidence in person. The Kimberley Land Council is concerned that conditions in which many representatives live will make responding to inquiries very difficult. Access to private telephone is difficult, with Bidyadanga having only 10 phones in 67 households. In addition, pay phones are often out of order. There is also concern that the Committee is yet to address the issue that many native title applicants in the area do not speak English or speak it as a second or third language. So far, the Kimberley Land Council's offer to provide an interpreter has been ignored. (*CT, 12 Apr, p3)*

In a letter to the Editor, the Chairperson of the Parliamentary Joint Committee on Native Title, Senator Jeannie Ferris, said that the Canberra Times article of 12 April erroneously implied that, without payment to cover their expenses, the views of some witnesses from the Kimberley would not be heard. Senator Ferris also said that the Committee has addressed concerns about the delivery of oral evidence in Indigenous languages. The Committee passed a resolution on 9 December 1998 'That all oral evidence is to be provided in English, or translated in the course of delivery. That where contemporaneous translation is not possible at a hearing, witnesses may advise the committee and request alternative arrangement'. (*CT, 25 Apr, p6)*

A meeting of representatives of Scouts Australia, the Council for Aboriginal Reconciliation, the Australian Sports Commission, ATSIC and Indigenous leaders has discussed the development and implementation of a Scouting in Indigenous Communities Program. The program will emphasise strong Indigenous ownership, marked by the intersection of Indigenous social and cultural life and mainstream Scouting activities. (*CAR Media Release, 14 Apr)**

A submission to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund says that the Government has failed to fix the registration test of the NTA. The Kimberley Land Council's submission says that the test infringes on the rights of native title owners, is unnecessarily complex, unworkable and eurocentric. KLC Executive Director, Mr Peter Yu, is concerned that the onerous administrative procedures were stopping genuine claims being registered. He said that Aboriginal people are being asked to express the relationships connecting them to country in a way which is at odds with the way many Aboriginal people defined their relationships. (*CM, 21 Apr, p4)*

The Labor Party, the Democrats and the Greens have agreed to promote an alternative draft preamble that recognises Indigenous Australians as the 'original occupants and custodians of our land'. The three parties are calling for comment on the draft. Democrat Senator, Ms Stott Despoja, said that the Democrats would support amending the draft to acknowledge Indigenous ownership. *(SMH, 29 Apr, p5)**

## Queensland

Members of the Queensland National Party have voted to oppose the draft preamble. They fear that recognition of Indigenous Australians in any form could boost claims to native title. (*Mer, 29 Mar, p4)**

The Queensland Mining Council says it will support miners asking for compensation from the Queensland Government over costs to the industry caused by disputes over native title processes. The Queensland Government, in an effort to clear the bottleneck in mining lease applications, is initiating a process to give lease applicants in the same districts the right to negotiate as one entity with native title applicants. (*CM, 30 Mar, p2)*

Goolburri Land Council members have voted to substantially re-elect the previous members of their board. The new board has voted unanimously to reject proposed changes to their Land Council boundaries. ATSIC Commissioner for the south-west region of Queensland, Mr Ray Robinson, said that the proposed changes to Queensland Native Title Representative Body boundaries, which were put forward by the Minister for Aboriginal and Torres Strait Islander Affairs, Senator Herron, were becoming increasingly untenable. (*Western Sun, 31 Mar, p5)**

ATSIC has called on the Queensland Government's new Council for Women to focus on action and solutions to issues of concern to Indigenous women. Issues named include native title and family violence. ATSIC Regional Council Chairwomen from Councils in Townsville, Cairns and south-east Queensland, have invited the Women's Council to consult with the Regional Councils and with Queensland's representative on the ATSIC Women's Advisory Committee. (*Torres News, 9 Apr, p12)*

## South Australia

Rural Landholders for Coexistence is holding a workshop about negotiated native title agreements. The workshop, *Talking Common Ground (SA)*, is devoted to case studies of negotiated agreements in South Australia and elsewhere. The organisers hope to attract South Australian leaseholders, Aboriginal people and others with a stake in the future of rural communities. The workshop aims to bring together the people who are most affected by native title to explore workable, negotiated solutions. (*Media Release – RLC, 11 Mar, p1, 2)**

Community groups will meet to discuss the South Australian Government's native title plans. The coalition of community organisations, which gathered to form Australians for Native Title and Reconciliation, will hold a public meeting called 'Sharing the Land'. The meeting will increase public awareness about the State Government's plans. (*Ad, 26 Apr, p13)*

# RECENT PUBLICATIONS (Not AIATSIS Publications)

**Governance Structures for Indigenous Australians on and off Native Title Lands**

An ARC collaborative research project is underway to develop recommendations for a more adequate fit between traditional forms of land 'ownership' and control under the laws of Aboriginal peoples and Torres Strait Islanders, and non-Indigenous forms of law and government.

The Project builds on provisions in the *Native Title Act 1993* (Cth) concerning prescribed bodies corporate and representative Aboriginal/Torres Strait Islander bodies. It extends to a consideration of mechanisms for asserting Indigenous peoples' interests in lands and waters that are not subject to native title, in matters such as environmental protection and cultural heritage.

The Project is being funded by an Australian Research Council Collaborative Research Grant to Emeritus Professor Garth Nettheim (University of NSW), Ms Donna Craig (Macquarie University) and Associate Professor Gary Meyers (Murdoch University). The industry partner is the National Native Title Tribunal.

The following discussion papers were released at the end of 1998:

- Discussion Paper 1 Introduction: Overview of the Project
- Discussion Paper 2 Introduction: International Law Standards
- Discussion Paper 3 Environmental and Natural Resources Management by Indigenous Peoples in North America: Inherent Rights to Self-Government Part 1 The US Experience

It is anticipated that 10 more discussion papers will be published in 1999. The papers can be accessed through the web at:
http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/index.html.

**Guide to Connection Reports**

The Queensland State Department of the Premier and Cabinet are producing a guide to compiling connection reports, which clearly sets out the State's requirements. The guide will also list sources of relevant material and provide some guidance on researching oral histories. For further information contact Val Donovan on phone (07) 3227 7994 or Colin Sheehan on phone (07) 3227 7964.

**Yarning About Native Title: a guide to native title law**

The National Native Title Tribunal has launched a special radio feature called *Yarning About Native Title*, explaining key aspects of native title law. The 30 minute program, which features seven of the Tribunal's Indigenous staff, will be sent on tape to 150 community radio stations and Indigenous resource centres around Australia.

Tribunal President Mr Graeme Neate said the program steers people through recent changes to the NTA using a series of conversations between Tribunal staff. He said *Yarning About Native Title* is jam-packed with information for Indigenous people about native title law and how it affects them.

The program deals with the new registration test, the right to negotiate, and the Tribunal's mediation process. *Yarning About Native Title* also explains how people can negotiate agreements to ensure that everyone's rights are respected and operate side by side.

The *Yarning About Native Title* audio tape is also an educational tool for individuals, organisations and community groups who want to learn more about native title law. The tape can also be used in community meetings or to assist applicants discuss native title with their legal representatives. *Yarning About Native Title* was produced by the Tribunal's Narelda Jacobs and Radio 1170/6AR, as a special feature of the regular bulletin Native Title News. The tape is free and will be circulated through Indigenous resource centres, media outlets, and native title representative bodies. It is available from Tribunal registries in all capital cities. To order a copy, phone 1800 640 501. (*NNTT Media Release, 20 Apr)**

Finlayson, J. D., Rigsby. B. and Bek, H. J. 1999 ***Connections in Native Title: Genealogies, Kinship and Groups***, Research Monograph No. 13, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.
**Summary:** *Connections in Native Title* is a collection of papers presented to the Anthropological Research Issues and Perspectives workshop held at the Australian National University in February 1998. The papers focus on issues of 'Genealogies, kinship, descent and groups: issues and problems in the native title era'. While these papers focus on issues for anthropological research, they also speak to a wider readership interested in native title claim preparation and mediation. Contributions focus on anthropological issues of kinship and social organisation in particular where these matters are increasingly sites of political and academic debate in native title claim research, preparation and presentation. This volume includes papers by Peter Sutton, Fiona Powell, Rod Hagen, Julie Finlayson, Ian Keen, Bruce Rigsby, Nancy M. Williams and Geoff Clark. Each author draws on their significant practical experience in both land rights and native title issues to discuss these matters. (*CAEPR flyer)*

National Native Title Tribunal 1999 ***Making Native Title Agreements***
**Summary:** *Making Native Title Agreements* is a pamphlet produced by the NNTT on Indigenous land use agreements (ILUAs). It briefly explains what ILUAs are as well as explaining the steps involved in making an ILUA. For more information about native title and ILUAs you can contact the NNTT on Freecall 1800 640 501.

## Native Title Research Unit Publications

*The following NTRU publications are available from AIATSIS. Please phone (02) 6246 1161, fax (02) 6249 1046 or email:* ntru@aiatsis.gov.au

***Regional Agreements: Key Issues in Australia – Volume 2, Case Studies***. Edited by Mary Edmunds, 1999. This publication will be available shortly. (cost $19.95 including postage)
***A Guide to Overseas Precedents of Relevance to Native Title*** Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden, 1998. (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, Summaries***. 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 free of charge from the Native Title Research Unit, AIATSIS, Phone (02) 6246 1161, Fax (02) 6249 1046:*

**Issues Papers published in 1998 and 1999:**
No. 20: ***Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime*** by J. C. Altman
No. 21: ***A New Way of Compensating: Maintenance of Culture through Agreement*** by Michael Levarch and Allison Riding
No. 22: ***'Beliefs, Feelings and Justice' Delgamuukw v British Columbia: A Judicial Consideration of Indigenous Peoples' Rights in Canada*** by Lisa Strelein
No. 23: ***'This Earth has an Aboriginal Culture Inside' Recognising the Cultural Value of Country*** by Kado Muir
No. 24: ***The Origin of the Protection of Aboriginal Rights in South Australian Pastoral Leases*** by Robert Foster
No. 25: ***Compulsory Acquisition and the Right to Negotiate*** by Neil Löfgren
No. 26: ***Engineering Unworkability: The Western Australian State Government and the Right to Negotiate*** by Anne De Soyza
No. 27: ***Extinguishment and the Nature of Native Title Fejo v Northern Territory*** by Lisa Strelein

**Regional Agreements Papers: Land, Rights, Laws: Issues of Native Title**
No. 5: ***Process, Politics and Regional Agreements*** by Ciaran O'Faircheallaigh
No. 6: ***The Yandicoogina Process: a model for negotiating land use agreements*** by Clive Senior
No. 7: ***Indigenous Land Use Agreements: New Opportunities and Challenges under the Amended Native Title Act*** by Dianne Smith

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*This newsletter was prepared by Penelope Moore*