A I A T S I S

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NATIVE TITLE NEWSLETTER

No. 6/96 December 1996

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NATIVE TITLE NEWS OF OCTOBER - NOVEMBER 1996

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As we go to press this month, the High Court on 23rd December 1996 handed down its judgement on the Wik case, the test case on whether pastoral leases extinguish native title. In a 4/3 decision, Justices Toohey, Gaudron, Gummow and Kirby ruled that the Queensland pastoral leases under consideration in the Wik case did not confer rights of exclusive possession on the lessees. They ruled in the case of the Wik peoples that pastoral leases did not necessarily extinguish native title. In relation to the second segment of the case, the Court ruled that the State of Queensland was not derelict in its fiduciary duty in allowing mining to take place at Aurukun.

As native title rights survive to the extent that they are not inconsistent with the rights granted to pastoralists under their leases, the judgement provides a strong basis for negotiation between native title claimants and pastoralists in relation to co- existence.

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1. Firsts - Crescent Head Decision and the

Handover of the first ILC Land

The first resolution of a native title claim for mainland Australia, by the Dunghutti people of Crescent Head in NSW, was announced on 9 October. The settlement involves the Dhungutti people allowing partial development of 12.4ha of land in return for compensation for the Government's sale of the land without establishing whether native title existed over it.

Justice French, president of the National Native Title Tribunal, hailed the settlement as one which satisfied the Aboriginal community, local people, and Government. Justice French said 'I think it will have a very important symbolic significance - people will realise that agreements are possible and that agreements can be made that benefit and protect all interests'. Patrick Dodson called the decision 'a timely and powerful symbol of reconciliation - measured, realistic and negotiated by all parties in a spirit of goodwill. He hailed the decision as an example of reconciliation which is called for in the current times: 'a form of agreement which deals with the legacies of our history, provides justice for all, and that takes us forward as a nation'.

Meanwhile the Indigenous Land Corporation on November 13 handed over the title deeds to the first property in Australia it has acquired. The 1.8ha site, comprising a former primary school at Henley Brook, with a teachers' residence and a few sheds, is in the path of a dreaming track for Noongar Aborigines *(Aus, 14 November, p4).**

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2. Amendments to the Native Title Act

ATSIC's discussion paper, 'Proposed Amendments to the *Native Title Act 1993*: Issues for Indigenous Peoples', released in November, is still available to the public. The document contains succinct overviews of native title rights; the relevance of the *Racial Discrimination Act 1975* to the NTA; mining on native title land; and the right to negotiate and international law. It concludes that indigenous people are not opposed to amendments to the NTA which improve the procedures of the NTA, but oppose those which dismantle native title rights in favour of the interests of State and Territory governments and resource developers.

This report can be obtained either from Martin Freckman of the Office of Public Affairs; from Di Myer of the native Title and Land Rights Branch of ATSIC, at PO Box 17, Woden, ACT 2606 [tel (06) 289 1222], OR from your local State or Regional Office of ATSIC. Issues of substance can be discussed with the Manager of the Policy and Legislation Section of the Native Title and Lnad Rights Branch in Canberra.

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3. Centre for Aboriginal Economic Policy Research paper on the Amendments

CAEPR has recently produced a new discussion paper, 'The Right to Negotiate and Native Title Future Acts: Implications of the *Native Title*

Amendment Bill 1996' (No 124) by Diane Smith. This paper focuses on how the Native Title Act has been practically implemented, highlighting difficulties and outcomes to date. The foreshadowed amendments to the right to negotiate are then critically assessed, including: the proposed exclusions mechanism; the conjunctive right to negotiate and 'project acts'; parallel processing; compulsory acquisition powers; Ministerial intervention; and the new claims registration test.

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4. Significant people in the development of Native Title legislation

Tributes were made in October to two of the landmark figures in native title - Eddie Koiko Mabo and Justice Lionel Murphy, whose questioning of the *terra nullius* doctrine was one of the factors which finally bore fruit in the Mabo (1992) overturning of the principle and the development of native title legislation.

The University of Queensland Press' biography of Mabo by Noel Loos and Koiki Mabo traces his development as an activist from the late 1950s when he left Mer and took a job on the mainland with a Queensland Railways construction gang and became interested in trade unionism. By 1962 he had a public profile and in 1967 organised a seminar in connection with the Referendum. In that year he took a job as a gardener at James Cook University in Townsville where he met academics such as Loos and Henry Reynolds, and began lecturing to white students in Loos' race relations course. Mabo's fight for his land began in the early 1970s when he was told that in the eyes of the Australian legal system the outer islands of the Torres Strait were Crown land. Koiko Mabo died of cancer only months before the seminal land rights judgement was enacted in his name.

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5. Review of Aboriginal Councils and Associations Act Report

The 'Review of the *Aboriginal Councils and Associations Act* 1976' Report has now been finalised. This report has major implications for native title in view of the need for all prescribed bodies corporate to be incorporated undder the Act. Copies of the final report are available by contacting the Assistant General Manager, Strategic Planning and Policy Branch, ATSIC, PO Box 17, Woden ACT 2606, Ph (06) 289 3318, or Fax (06) 285 3603.

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NATIVE TITLE IN THE NEWS

(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.)

Aus = Australian
Ad = Advertiser (SA)
CM = Courier Mail (QLD)
CP = Cairns Post
CT = Canberra Times
Fin R = Financial Review
HS = Herald Sun (VIC)
Mer = Hobart Mercury
LE = Launceston Examiner
NTN = Northern Territory News
SMH = Sydney Morning Herald
Tel M = Telegraph Mirror (NSW)
WA = West Australian
WAus = Weekend Australian
KM = Kalgoorlie Miner

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The race and history Debates

October - November 1996 has been dominated by public debate arising from the claims made by Pauline Hanson in her maiden speech in the House of Representatives on 10th September. A major outcome of the debate over Mrs Hanson's call for a cessation of Asian immigration and statements on Aboriginal affairs was a joint party declaration in the House of Representatives on 30 October. This declaration condemned racial discrimination and reaffirmed the commitment of the House to the process of reconciliation with Aboriginal and Torres Strait Islander people.

A spate of analyses of these developments by prominent historians and politicians ensued. Peter Cochrane, a senior lecturer in History at the University of Sydney, in an article in *The Australian* on 10 October, wrote that Hanson was revisiting the past by calling for a string of trademark Menzies policies including discriminatory immigration, monoculturalism, and grand-scale national development projects. Like Menzies, she is

> 'basing her career on a constituency of allegedly "forgotten people" - this time the Anglo-Celtic majority, working class battlers, vernacular Australia with its vernacular heritage... The talk about Aboriginal and ethnic privileges, the calls for equality and so on are a lament for the time when Anglos saw only their own reflection on the world around them, when they and they alone had a sense of "homely belonging" in this country....Hanson's potency rests not only on racism abut on a powerful sense of cultural loss - of displacement from the centre of things - which has been worked readily into a mythology of victimisation.'

The same monoculturalist attitudes appear to underly Mrs Hanson's speech and the current attack on native title legislation. A few days after Cochrane's article, Henry Reynolds in an article in *The Age*, discussed the

threat to Australia's overseas standing arising from the attack by Pauline Hanson and other Parliamentarians on the reconciliation aspects of native title legislation. According to him, the Mabo decision was seen as 'a sign that Australia has finally shed its racist and discriminatory heritage... For those close observers of the local scene, such developments as the reconciliation process, the engagement with Asia and the promotion of multiculturalism all point in the same direction. This reassment has been of profound importance and more significant than many of the more deliberate Australian actions on the world stage.'

The question of how Australians should respond to the facts of our history was raised by the Prime Minister in his Sir Robert Menzies lecture on 18 November. He raised the question of guilt, and whether living Australians are responsible for the past, lamenting that 'some of the curricula go close to teaching children that we have a racist, bigoted past.'

Noel Pearson, former Chairman of the Cape York Land Council responded by stressing that the Mabo judgement is based on the contemporary view of Australian history which incorporates Aboriginal people. He stated that while Mabo has thrown the country into social, political and social turmoil, this in his view is a necessary part of redressing the legacy of the past. Pearson emphasised that there have been considerable borrowings between Aboriginal and non-Aboriginal Australians, and that Aboriginal people are not urging guilt on the Australian people. He reiterated Paul Keating's words at Redfern Park in December 1992: 'Down the years there has been no shortage of guilt but it has not produced the responses we need. Guilt is not a very constructive emotion. I think that what we need to do is open our hearts a bit. All of us.'

Pearson's warning is that if the Government's amendments to the native title legislation succeed, 'the spirit of compromise and moral reckoning which Mabo represents will be lost to us and to future generations.'

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CLAIMS

NSW

Crescent Head [NNTT Ref# NC#94/5]

The NSW Government will pay Crescent Head Aborigines some an initial $738,000 in compensation as part of Australia's first successful mainland native title application. The outcome, which was a mediated solution, involves the Dhungutti people allowing partial development of 12.4ha of land in return for compensation for the Government's sale of the land without establishing whether native title existed over it *(CM, 10 October, p5).**

Justice French said that the two years taken to resolve the Crescent Head claim was speedy compared with experiences in New Zealand and Canada *(Newcastle Herald, 10 October, p6).*

Debra Jopson, writing in *The Sydney Morning Herald*, took a detailed look at the history of the case, recording among other things the shift of attitudes in the non-Aboriginal residents' association after the release of linguistic, archaeological and historical evidence in support of the claim. Linguist Amanda Lissarrague was able to prove that the Dhungutti language has remained substantially the same in 1994 as recorded in the late 19th and early 20th centuries; middens, a ceremonial bora ground and a stone-built fish trap remain; and the Crescent Head land had been used for camp sites from 1900 - 1956 *(SMH 11 October, p15)*.

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VIC

Yorta Yorta [NNTT Ref#VC94/1]

The Yorta Yorta people's claim to 4,000 sq km of Crown land, containing the Barmah State Forest; compensation for 16,000 sq km of land lost to freehold title; and for native title rights to assist in the management of water in the Murray, Ovens, Goulburn and Edward Rivers and their tributaries, began in the Federal Court on 8 October. The claim, centred on closely populated valleys in the two most populated States, and on rights over water and irrigation, has created a climate of the major parties seeking to create legal precedents from the case *(Aus, 8 October, p11)*.

A range of 12 existing licences, such as for grazing, water pumping and wood cutting are under question in the case. Nervous industry groups fear a Yorta Yorta victory could mean the end of grazing and logging on Crown land, and increased costs for water which is vital to the region's agricultural sector. The case is expected to last more than 2 years, and to end in the High Court *(HS, 2 October, p18)*.

The Victorian Premier, Jeff Kennett, said that his Government would contest the Yorta Yorta claim to avoid setting a precedent for governments to settle native title claims out of court *(HS, 4 October, p10)*.

Mr Brian Keon-Cohen, opening the case for the Yorta Yorta, said that the claim would raise legal issues not hitherto determined in the Federal Court or any other court. The Yorta Yorta claim is contested by more than 500 respondents, including the Victorian and NSW governments, the Murray Darling Basin Commission, local government authorities and timber, grazing and farming interests *(Aus, 9 October, p2)*.

Justice Howard Olney has permitted the Yorta Yorta Aboriginal community to videotape Federal Court hearings of its native title claim on condition that the recordings not interrupt proceedings and that sound recordings cannot be broadcast without court permission before the proceedings end. Mr Lew Griffiths, who will help make the recording, said the Yorta Yorta feel a deep connection with their history and wanted it to live beyond the hearings in documentaries, education and touch-screen displays at cultural centres *(Age, 28 October, pA4)*.

Monica Morgan outlined the Yorta Yorta's broad vision in relation to water and the environment- water releases along the Murray to be deregulated to benefit the ecosystem; greater impetus to clean up the

Murray; Crown land to be accessible to all; and irrigation and community water supplies to continue. In response to local farmers' fears that the Yorta Yorta may seek to impose charges for irrigation, she denied that Aborigines want compensation for water *(Weekly Times, 30 October, p15).*

Prominent businessman John Elliott, who has a large property near Echuca, described the Yorta Yorta claim as absurd. The Yorta Yorta chose not to respond, and continued with the process of showing Justice Olney sites in the area, such as a paddock which was the site of a protected station for Aborigines some 140 years ago, a burial ground, rock well and scarred trees *(Age, 31 October, pA7).*

Evidence of continuity of traditional knowledge among the Yorta Yorta through a system of elders responsible for upholding tribal laws and passing on oral history, spiritual law and administration of traditional medecines to future generations has been heard. An elder, Frances Mathyssen, gave evidence concerning a dispute involving three tribal groups whose remains are scattered through the Barmah Forest, the totems of the group, and medecines still in use by the people *(Herald Sun, 30 October, p14).*

The effect on Yorta Yorta rights to land of a succession of cattle leases since the 1940s has yet to be heard *(WAus, 2 November, p7).*

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QLD

Mt Isa [NNTT Ref# 96/104]

The Kalkadoon Dancers, acting on behalf of the Kalkadoon people, have lodged a native title claim over a large area of north-west Queensland including the city of Mt Isa. The area is west of Cloncurry, and includes parts of the Cloncurry, Burke, Mort and Hamilton Rivers *(DT, 9 November, p28).**

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Yirrganydji [NNTT Ref#QC 95/6]

Leasehold title, due to expire in 2030, to Double Island in far north Queensland has been sold to a private investor. The Yirrganydji people last November claimed native title rights to assist in the protection and controlled use of the lands and waters of the island, as part of their overall claim to an area through the Cairns and Douglas Shire Councils and offshore from Port Douglas to False Cape *(Fin R, 7 October, p32).*

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Gungarri [NNTT Ref#QC96/1]

Queensland National Party Senator Bill O'Chee has claimed that notices

issued by the National Native Title Tribunal to graziers subject to native title claims in south- west Queensland were misleading and could jeopardise their property rights. Senator O'Chee stated that the notices were misleading in that they present the Gungarri native title claim as not conflicting with graziers' title and existing rights when the Gungarri claim is 'to be entitled as against the whole world to possession, occupation, use and enjoyment of the claimed land *(Media Release, 5 November)*.

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WA

Miriuwung Gajerrong Claim [NNTT Ref #WC 94/2]

In handing down his decision on WA Government appeals against NNTT rulings, Federal Court Justice Malcolm Lee upheld the NNTT's decision that the WA Government should not have put the proposed licence to Carnegie Minerals and Pecan Holdings on the fast track process because sites of significance were involved. Justice Lee ordered the WA Government to pay costs and the companies to negotiate with the Miriuwung Gajerrong *(WA, 19 November, p10)*.

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Peel Claim [NNTT Ref#WC96/100]

A third claim over the Peel area has been lodged by the Peel Region Nyoongah people in order to protect the large number of sites in the area. The claim extends from Garden Island, south to Mayalup, east to the southern tip of Harvey and north to Bedforddale *(Sunday Times, 27 October, p44)*.

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Cape Mentelle Claim [NNTTRef#WC96/106]

Ken Colbung has lodged a native title claim to a large area of the south-west, from Cape Mentelle near Margaret River east to Broomehill and south-east to Groper Bluff near Bremer Bay. The claim, which at 13 November had not been accepted by the NNTT, is the third in the Leeuwin area *(WA, 13 November, p54)*.

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NT

Darwin Claim [NNTTRef#DC96/1-7]

The Dangbala clan has lodged the first native title applications over areas

of inner city Darwin, including Myilly Point, Stuart Park and Mindil Beach. Mr Quaill said there was no ambit claim and no intention to stop development plans in any of the areas, but his aim was to protect the land under claim or gain compensation for its use *(NTN, 23 October, p4).**

The editor of *The Northern Territory News* considers the native title claim over Darwin and concludes that it borders on the mischievous and damages the cause of other more genuine claims. The editor believes that native title should be annulled by the fact that Darwin is a city *(NTN, 24 October, p8).*

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NATIVE TITLE AMENDMENTS

Speaking in relation to Pauline Hanson's maiden speech in the House of Representatives, Prime Minister Howard said that although he thought that some of what Hanson said was an accurate reflection of what people feel, he disagreed with her in believing that Aborigines are an advantaged group. He also reiterated his intention to amend the Native Title Act to prevent it stopping legitimate development *(Mer, 1 October, p8).*

The Prime Minister told the Liberal Party in Perth that existing native title legislation is unreasonably and unfairly hampering necessary development, not only in WA, but in other States. He criticised the Keating Government's legislation as insensitive to the position of WA with its enormous resource sector and high proportion of Crown land *(WA, 2 October, p5).*

Nigel Wilson, writing for *The Australian*, stated that 'reinstatement' of the threshold test to obtain the right to negotiate native title claims was the key component of the Government's proposed amendments to the NTA. This component according to Wilson reflected mining industry claims that existing legislation does not eliminate overlapping claims or applications with no chance of succeeding *(Aus, 3 October, p3).*

The Howard Government is seeking to use the NTA amendments to impose controls it unsuccessfully tried to place on Aboriginal organisations generally, on the functions, funding and finances of representative bodies. The Government is also proposing amendments giving the Minister for Aboriginal Affairs power to intervene in claims, decide on claims, and remove the right to negotiate from major infrastructure projects *(Age, 9 October, pA6).**

Crispin Hull in *The Canberra Times* discusses the Government's proposal to give the Minister for Aboriginal Affairs power to override native title in major development projects. He states that native title as a common law right is protected under the Constitution and cannot be taken away by the Government except under just terms *(CT, 9 October, p4).*

The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson, criticised the Government for delivering to indigenous Australians a range of amendments which will erode their rights without making the NTA work better for anyone. He also criticised the proposals to increase Ministerial powers to intervene as completely undermining the

arbitration process *(Press Release, 9 October).*

Frank Brennan called on the Prime Minister to lead the nation in reconciliation, justice, and in working out a way of sharing this country. He warned that the Coalition parties risk destroying the common ground which has been won through negotiation with Aborigines and Torres Strait Islanders *(SMH, 9 October, p19).*

WA Greens Senator, Dee Margetts, criticised the announcement of amendments to the NTA despite the fact that talks between indigenous and industry groups had not concluded. Labor and the Greens made it clear that they wanted to postpone the parliamentry debate until next year to enable more meaningful consultation with Aboriginal people and to allow a Parliamentary Committee to consider the amendments *(Cairns Post, 10 October, p13).*

Senator Minchin, Parliamentary Secretary to the Prime Minister, said that the resolution of the Crescent Head claim does not reduce the need for amendments to the NTA to make it more workable. He said that the claim involved a relatively small area of Crown land and did not involve any issues relating to mining or exploration, yet had taken 2 years to negotiate, while numerous other claims lodged with the NNTT were much more complex. In his view there was a need for the Act to deliver 'more certainty' on native title matters *(Press Release, 10 October).*

The Sydney Morning Herald, reviewing the Crescent Head decision, said that it was an unfortunate co-incidence for the Federal Government that the settlement of the claim came on the same day as a Government Minister described the NTA as unworkable. The paper said that the basis of discussions on the amendments should be what can genuinely be done to speed up resolution of claims, without undermining the principles of the Act, rather than accepting extravagant claims that the Act is unworkable *(SMH, 11 October, p18).*

Senator Minchin rejected Lois O'Donoghue's assessment that the Government is unwilling to consult with Aborigines in an open and meaningful way on its proposed amendments to the NTA. Senator Minchin said that he has been consulting with indigenous people about the Native Title Act since March this year, and has received 42 submissions from indigenous groups *(Fin R, 18 October, p30).*

In their Press Release of 18 October on the Government's proposed amendments to the NTA, Indigenous representatives stressed the process of negotiation which went into the drafting of the original legislation, through which indigenous people made significant concessions to meet the interests of non-indigenous Australians. 'In effect, this was the first treaty between the indigenous owners and the commonwealth in the history of the non-indigenous occupation of this country and was a significant milestone in the development of this nation - something which the current Government now chooses to ignore.' *(Press Release, 18 October).*

Northern Land Council chairman Galarrwuy Yunupingu refused to attend meetings about native title in Canberrra until the government demonstrated 'respect for, and a willingness to come to grips with, what native title means for Aboriginal people.' He said that native title 'is not just about pieces of whitefella paper, it is the customary law and customary system

which still governs us and gives us the rights to survive and live.' *(NTN, 21 October, p14).*

Speaking on behalf of Aboriginal leaders, the executive director of the Kimberley Land Council, Mr Peter Yu, said that the proposed changes to the NTA were unacceptable as the Government had failed to treat indigenous Australians as equals. Mr Yu said that native title is fundamentally the recognition of indigenous culture and rights, and that all Australians would oppose such an attack on their fundamental rights *(SMH, 19 October, p5).*

Aboriginal Legal Service chief executive Dennis Egginton warned that race relations were about to explode in Western Australia as a result of proposed watering down of native title legislation and inflammatory statements by politicians including Pauline Hanson. He said the Sydney 2000 Olympics would be targeted for disruption *(Sunday Times, 20 October, p3).*

The WA Premier, Mr Court, has warned that he will not proceed with plans to set up a State native title tribunal if the Howard Government's amendments to the NTA fail to pass Federal Parliament as a package. He said that if key features of the package are changed or not passed, the Act would remain unworkable and WA would not set up a tribunal in those circumstances *(Aus, 28 October, p3).*

Following the tabling by the Government of the Report of the Parliamentary Joint Committee on Native Title, on the *NTA Amendment Bill 1996*, the Opposition and Democrats announced they would try to make the Government give legislative force to its promise that the proposed amendments will not breach the Racial Discrimination Act. Opposition spokesman on Aboriginal Affairs, Daryl Melham, criticised proposals to allow the Minister for Aboriginal Affairs to intervene to allow projects of economic importance, while Senator Kernot said that the changes were clearly designed to favour industry at the expense of Aborigines *(WA, 19 November, p10).**

Opposition leader Kim Beazley told the National Farmers' Federation conference in Canberra that Labor would be able to support the Government's proposed amendments to the NTA provided the Government showed good faith. Mr Beazley said that the determination of native title could be made more workable without depreciating indigenous Australians' common law native title rights and without conflicting with the Racial Discrimination Act *(Townsville Bulletin, 20 November, p11).*

The Federal Government deferred the Hose of Representatives debate of the amendments to the NTA until February 1997. The decision was based on the deferred tabling of the Parliamentary Joint Committee on Native Title report on the proposed amendments on 13 December, and the need to incorportate any of the Committee's recommendations into the Amendment Bill prior to debate in the House of Representatives *(Media Release, 22 November).*

State and Territory Aboriginal and Torres Strait Islander Affairs Ministers were briefed on the Federal Government's proposed NTA amendments at a meeting of the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA) in Adelaide on 22 November. Senator

Minchin, who conducted the briefing, stressed that some amendments, such as the proposed statutory regime for Aboriginal and Torres Strait Islander representative bodies and the recognition of indigenous land use agreements outside the current procedural requirements of the NTA, had been adopted for the benefit of indigenous interests as a result of the Council for Aboriginal Reconciliation talks *(Media Release, 22 November)*.

ATSIC issued its response to the Government's proposed amendments to the NTA on 26 November. The document says that sithout substantial changes to the Government's proposals, the Act would become less workable, not more, and will result in an environment of mistrust, contention and increasing litigation *(CT, 27 November, p4)*.

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MINING AND NATURAL RESOURCES

National

In its 1996 annual report, mining company WMC stated that its exploration expenditure within Australia has fallen while its overall exploration budget rose by 32%. The Company said that native title issues may cause a further reduction in its expenditure on exploration in Australia *(Aus, 1 October)*.

Patrick Dodson, writing in *The Sydney Morning Herald*, states that Aboriginal communities have agreed to allow development to proceed while they await recognition of their native title rights. He said that in Western Australia almost 4,000 grants of mining tenements have been cleared without any requirement to negotiate with Aboriginal people. He blamed the WA Government's failure to negotiate in good faith under the NTA for generating anxiety and hostility, and creating long delays in the granting of mining leases across the State *(SMH, 11 October, p19)*.

MIM Holdings Ltd chief executive Nick Stump warned that Australia must resist a 'drift to insecurity of land tenure' to ensure it kept its competitive edge in the mining sector. He expressed the view that security of tenure and native title are quite unrelated to the well-being of Aboriginal people *(CT, 23 October, p35)*.

Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, responding to an article by David Barnett in *The Financial Review*, states that indigenous Australians are not anti-development - more than 2,900 exploration and prospecting licences were issued in WA in accordance with the NTA up to January 30, 1996. What indigenous Australians insist on is that those native title rights which have survived over two centuries of dispossession be given equal protection to the property rights of other Australians *(Fin R, 11 November, p2)*.

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NT

Coronation Hill

The sensitive issue of mining at Coronation Hill has resurfaced, with the Minister of Resources, Warwick Parer, saying he could see a time when it could go ahead. Mr Parer said it would depend on the future attitudes of the Jawoyn people and Newcrest Mining Company *(Age, 11 October, pA4).*

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Jabiluka

Aboriginal groups are seeking legal advice on ways to rescind the approval they granted 14 years ago to mine uranium at Jabiluka. The chairwoman of the Gundjehmi Aboriginal Corporation, Ms Yvonne Margarula, whose father gave permission for mining, said that she believed mining was poisoning water and fish on Mirrar Erre clan lands *(Aus, 22 October).*

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Energy Resources Australia

The Australian Conservation Foundation and Greens Senator Bob Brown dismissed a favourable Environmental Impact Study prepared by Energy Resources Australia for one of its own proposed uranium mines as a public relations exercise which glossed over the important issues. ACF executive director, Jim Downey, called for a full public inquiry into the mine *(Ad, 12 October, p14).**

ERA, which needs the agreement of traditional custodians to truck ore from Jabiluka to Ranger mine for milling and processing, has warned Aboriginal land owners that if they took too long to agree to the proposal or rejected it, the company would pursue an alternative with greater environmental impacts. The alternative - to mill on the site - involves doubling the site area, and a five-fold increase in the water catchment *(CT, 18 October, p17).*

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Fishing

An agreement on dugong protection in the Borroloola area is being hailed as a model of the benefits of Aboriginal traditional owners and the commercial fishing industry negotiating over concerns about the marine environment. Northern Land Council Chairman, Galarrwuy Yunupingu, and NT Fishing Industry Council executive Officer, Ian Smith, jointly announced the strategy to minimise accidental capture of dugong in barramundi nets while retaining business viability *(Media Release November 7).*

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WA

In a discussion of the impact of the NTA on mining in WA, Janine MacDonald provides the following information: most of the Kimberley Land Council's 21 native title claims were made in response to State Government's notices of intention for mining or exploration; some 1000 mining leases, half of which are in the Goldfields, were subject to right to negotiate procedures. Ten mining leases have been issued after NNTT rulings, seven with conditions *(WA, 3 October, p11).*

Mining title holders will be responsible for native title compensation when mining titles are granted or worked under new legislative changes bringing WA into line with most other States. The Chamber of Minerals and Energy spokesman Simon Williamson said that miners were concerned that they would be exploring without knowing the level of compensation for which they could be liable or its timing *(WA, 7 November, p38).**

A deal signed between RTZ-CRA Hamersley Iron and Pilbara Aborigines could deliver $60 million in benefits to the Aborigines in return for development of the Yandicoogina mine. Approvals for mining have to go through native title procedures, but both parties are confident there will be no objections *(WA, 21 November, p47).**

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QLD

Michael Pinnock, chief executive of the Queensland Mining Council, summarising the state of mining in Queensland, said the situation is confused with exploration speeding up, major new prospects identified, and the world market for coal soaring. He said on the other hand through native title legislation, access is blocked for new projects, mining leases have been delayed, and the issue of pastoral leases still has not been decided *(Fin R, 11 October, p75).*

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Pipeline Corridor

The Queensland Government is planning to acquire land by easement to develop an 800 km multi-user miscellaneous transport infrastructure (MTI) corridor from south- west Queensland to Mt Isa. The corridor is to be set up under s25 of the *Transport Planning and Co-ordination Act (1994).* Native title rights, where they are found to exist, will be recognised and protected *(CM, 7 October, p18).*

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Ernest Henry

MIM Holding's Ernest Henry copper project in north-west Queensland reported it was approached by an Aboriginal group seeking $120 million as compensation for land use, in return for no native title claim interference

to the mine or the supply of water or power. Mr Charles Perkins, consultant to the Mitakoodi Juhnjlar Aboriginal Corporation, denied that this sum had been fixed; while Mr Colin Hardy, solicitor for the group, said that the people he represented were seeking royalties over Ernest Henry production as part of waking up to their rights *(Fin R, 18 October, p31).**

Marcus Priest of *The Courier Mail* states that Mr Perkins' company, Sancave Pty Ltd, has an agreement with Aboriginal organisations in the north-west of Queensland to take a consultancy fee of 15% of any benefits the groups receive. A spokesman for Ernest Henry Mine said that native title no longer existed over the mine, as the mining lease had been issued in 1974, and that a new native title claim would not affect the right of EHM to mine the deposit *(CM, 18 October, p1).**

Justice Doug Drummond on 18 October dismissed an application brought by the Kalkadoon Aboriginal dancers on behalf of the Kalkadoon people that the construction of a powerline to EHM would endanger Aboriginal sites *(CM, 19 October, p6).*

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Osborne

The Yullama and Kalkadoon people have lodged an application for native title over Placer Pacific's $200 million Osborne copper-gold mine in north-west Queensland. The claim comes despite a controversial contractual agreement, from which some Kalkadoons claim to have been excluded, between the Kalkadoon Tribal Council and Placer, in which the KTC gave an undertaking not to make any native title claims over the mine, in return for small sums to be used for a scholarship and cultural and education initiatives *(Fin R, 23 October).*

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Korea Zinc

Queensland State Cabinet approved the Impact Assessment Study for the Korea Zinc refinery in Townsville. Cabinet also agrred to the drafting of enabling legislation to deal with special project requirements such as land rezoning and the exclusion of culturally sensitive areas *(Fin R, 1 October, p7).*

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Century Zinc Mine

Queensland government negotiator, Bill Hayden, travelled to the Gulf of Carpentaria where he held useful talks with Century Zinc and representatives of Aboriginal communities affected by the proposed mine. Following his visit, the National Native Title Tribunal appointed a team of 4 mediators, including Tribunal president, Justice French. Hayden stressed that he is not a mediator, but will meet with Justice French to discuss a co-ordinated approach *(CM, 1 October, p2).**

Statements by Bill Hayden to the Carpentaria Land Council that he belived the Century Zinc mine would be environmentally safe, led to heckling on his recent trip to the Gulf *(Bulletin, 8 October, p15).*

The Queensland Premier, Rob Borbidge, said that he was happy with progress and was confident that Bill Hayden would reach a resolution with the other stakeholders by January. He said that it was the first time the right to negotiate provisions of the NTA have been exercised in Australia, so it was somewhat of a pioneering task *(CT, 8 November, p13).*

The parties engaged in the right to negotiate process under the NTA - RTZ'-CRA's Century Zinc Ltd, the Queensland Government and the 5 local Aboriginal groups affected by the mine were expected to lead submissions placed before mediators in early December *(Aus, 25 November, p29).**

The Queensland Government on 25 November approved a $30 million infrastructure package as an incentive in addition to the $60 million package promised to Gulf communities by Century Zinc to get the development of the mine back on track *(FinR, 26 November, p12).**

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SA

A report in *The Advertiser* states that the SA mining scene is marked by doubt and confusion, with some $5m of exploration spending deferred and one overseas firm believed to have abandoned its program in the State. Although 5 Aboriginal groups have lodged claims over a nothern exploration licence near Lake Froma and overlapping claims have been received from groups in Ceduna, Cooper Pedy and Port Augusta, company executives said that in most cases there had been constructive negotiations with Aboriginal groups over access to exploration areas *(Ad, 9 November, p37).*

A special report by Andy Williams, announcing the discovery of a major gold province in the Gawler Craton area in the north-west of South Australia casts a different light on the situation, stating that exploration for gold, copper, and petroleum is at record levels in SA. Most exploration in SA for minerals, oil and gas is on pastoral leases, and mining companies are waiting for the High Court decision on Wik on whether pastoral leasehold extinguishes native title, to gauge the extent to which they will need to negotiate with Aboriginal groups *(Sunday Mail, 17 November, p40).*

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GENERAL NATIVE TITLE ISSUES

National

Yothu Yindi band leader, Manduwuy Yunupingu, praised the Aboriginal Land Rights (NT) Act 1976 as having enriched the lives of Aboriginal Territorians, opening up a brighter future involving an independent economy, and alternative ways to maintain culture and traditions. He suggested that the legislation should be used as a model in determining the final shape of the Native Title Act *(NTN, 1 October, p16)*.

Galarrwuy Yunupingu, Chairman of the northern Land Council, said that continued attacks on Aboriginal native title rights and social justice are like a spear in the heart to Aboriginal self determination. He said that loss of land rights would leave Aboriginal people as powerless as scavenger birds in Australian cities *(NTN, 1 October, p2)*.

In a submission to the Stolen Generation Inquiry, solicitors Corrs Chambers Westgarth warned that Aborigines forcibly removed from their parents would find it difficult to make a successful native title claim. The submission said that Aborigines might be able to bring action against the Commonwealth if it could be proved that the Government gained unfettered title to land by removing the traditional indigenous owners *(Age, 29 October, p A4)*

The National Farmers' Federation appointed a new Director responsible for policies relating to natural resource management and native title. Mr Rob Thorman, formerly of the Australian Local Government Association, has experience in consultations on native title in local government bodies, and with Aboriginal communities on land management issues in North Queensland, the Willandra lakes region, Central Australia and Arnhem land *(Press Release, 3 October)*.

Justice French in the National Native Title Tribunal's 1995-6 annual report discussed the need to take into account existing treaty arrangements with Papua New Guinea in the consideration of native title claims in the Torres Strait *(Fin R, 6 November, p20)*.

North Queensland Aboriginal representatives made an 11th hour bid to meet President Bill Clinton after being excluded from his schedule. Amendments to the NTA, and a plea to keep US multinationals out of environmentally sensitive areas across the globe, were among the issues they wished to raise with the President *(Mer, 18 November, p4)*.

Carpentaria Land Council co-ordinator Murandoo Yanner is looking forward to the Sydney 2000 Olympics to highlight the Aboriginal land rights movement on the international stage *(Toowoomba Chronicle, 20 November, p3)*.

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NSW

Boobera Lagoon

Senator Herron declined to place an emergency protection order on the lagoon, believed by the Gamileroi people to be a significant resting place of Gurriya, the Rainbow Serpent, to prevent desecration of the site through waterskiing. The Minister is not expected to make a decision on

the site before early next year *(CM, 7 October, p4).*

ATSIC's NSW State Manager issued a 48 hour protection order against waterskiing at the request of the NSW Aboriginal Land Council. The order was given under a clause of the Heritage Protection Act which provides for a declaration to be made 'in lieu of the minister's decision' *(SMH, 14 October, p3).*

The Federal Court ordered Senator Herron to make known his reasons for refusing to ban water sports on Boobera Lagoon. Justice Foster, responding to the NSW Aboriginal Land Council's request for an injunction to overturn Senator Herron's decision, said that he did not have jurisdiction to overturn the decision, but was able to order the Minister to make known his reasons *(DT, 18 October, p21).*

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National Parks

Five NSW National Parks - Mungo, Mount Grenville, Mootwingee, Mount Yarrowyck and Jervis Bay - will be handed back to their traditional Aboriginal owners under new legislation aimed at significantly advancing Aboriginal reconciliation in the State. Under the laws, which will ensure that they remain open to the public, the parks will be leased back to the Government and controlled by joint boards of management by a majority of traditional owners *(SMH, 20 november, p10).**

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Wamboyn

Eden Local Aboriginal Land Council has indicated it may be forced to file a native title claim to an area around Womboyn and Nelson's Beach if the National Parks and Wildlife Service go ahead with a plan to close a road and create a wilderness area. The road closure will prevent Aboriginal people having access to sacred sites in the area, and from operating an eco-tourism which they have proposed to run in conjunction with the local authority and residents *(DT, 21 October, p9).*

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QLD

Brisbane City Council

Brisbane City Council has moved to mediate with the Quandamooka Land Council in its native title claim on behalf of the Koenpul, Nguri and Nunukul peoples over several Moreton Bay beaches. The BCC has agreed to set up a working group with the QLC to address joint interests and to officially acknowledge the council's traditional attachment to Moreton Island *(CM, 19 November, p6).*

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Draft Cape York Peninsula Land Use Strategy

The United Graziers Association launched another assault on the Cape York Heads of Agreement in late October with an attack on the Cape York Regional Advisory Group. The chairman of CYRAG, Jim Petrich, defended the representativeness and bi-partisan nature of the organisation *(North Queensland Register - Townsville, 31 October).*

The draft Cape York Peninsula Land Use Strategy report was launched for public consultation by the Hon Di McCauley, Queensland Minister of Local Government and planning and Mr Warren Entsch, Federal Member for Leichardt, on behalf of the Federal Minister for the Environment, Senator Robert Hill. The report describes a vision of Cape York in the year 2000 and conservation, economic, cultural lifestyle and infrastructure strategies of achieve it *(Media Release, 7 November).*

The new draft stategy endorsed the historic Cape York Land Use Agreement by also backing negotiated agreements as the best method of land management. Mr Borbidge, who rejected the CYLUA earlier this year on legal advice that the State should not support a move that gave native title provisions to pastoral land while Queensland was fighting such a step in the high Court Wik case, will visit the region to talk to people and await the outcome of the Wik case *(CM, 27 November, p3).*

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Indigenous Land Corporation

The ILC has received proposals to buy land in the MT Isa, Cairns, Townsville, Rockhampton, Roma and Brisbane regions over the next 6 years. Parcels of land identified by the ILC for possible purchase represent 2.44% of the State's total area *(Sunday Mail, 13 October, p57).*

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Carpentaria Land Council

Accountants investigating expenditure by the Carpentaria Land Council claimed that Murandoo Yanner had not reported to the governing committee on a regular basis regarding travel, air charter and accommodation costs. Mr Yanner replied that administrative problems were inevitable in the organisation which had grown from 1 person to 23 employees in 3 offices over a 12 month period *(CM, 3 October, p6).*

The Registrar of Aboriginal Corporations has given the Carpentaria Land Council 10 days to show why it should not be placed in the hands of an administrator *(CM, 9 November, p6).*

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WA

The propriety of consultancy payments by Goldfields Land Council has been questioned by some native title claimants and is under investigation by ATSIC *(WA, 2 October, p30).*

Goldfields miners, explorers and native title parties will discuss a regional agreement to simplify the issuing of mining tenements in the Goldfields. The broad regional agreement, if endorsed by all parties, would supersede the Murrin Murrin Foundation previously planned by Anaconda Nickel *(WA, 2 November, p30).*

The mining industry has reportedly shelved a proposal for a regional agreement to deal with overlapping native title claims in the Goldfields because of dispute. The agreement was to have been discussed at a NNTT conference but talks have been postponed *(WA, 12 November, p7).*

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State Government Negotiations outside the NTA

Premier Richard Court announced that his Government was "very close" to transferring over 25 million hectares of land, including the township of Warburton, to the Ngaanyatjarra community, in negotiations outside the "unworkable" Federal NTA. Mr Court said under the agreement communities would gain a mixture of freehold and perpetual leasehold land, plus some mining royalty rights, and that similar negotiations were underway withother communities *(CT, 17 November, p1).**

Premier Court's native title adviser, John Clarke, moved quickly to hose down the story, stating that a deal is years away and that it is premature to say that the land will be handed over. It is believed that the Government is negotiating with the Oombulgurri and Burringurrah Aboriginal communities to obtain agreements outside the Native Title Act *(WA, 19 November, p27).*

The Ngaanyatjarra Council's legal adviser, Daniel O'Dea, called on the WA Government to clear up confusion which had resulted from media reports that the handover of the land was imminent *(WA, 21 November, p45).*

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State Goverment Appeals Against NNTT Decisions

Federal Court Justice Malcolm Lee has rejected two of the WA Government's appeals against NNTT decisions over attempts by the State to fast-track mining and petroleum exploration licences. The decisions follow NNTT criticism of the WA Government's blanket approach of referring all applications for exploration licences through an expedited

procedure where they do not have to negotiate with native title claimants *(WA, 19 November, p10)*.

Australian National University law lecturer Jennifer Clarke said that the WA Government is taking on legal challenges regardless of their merit and liklihood of succeeding, and that it could not claim that the Act was unworkable when it was not trying to follow procedures. Premier Court has refused to reveal the cost of his Government's native title challenges *(WA, 20 November, p10)*.

Premier Court told a mining industry lunch that a failure by the Senate to pass the whole package of amendments to the native title legislation would lead Western Australia to demand legislation to extinguish native title on pastoral leases *(Aus, 21 November, p4)*.

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NT

Northern Territory Railway

The South Australia and NT Governments have formed a statutory body, the AustralAsia Railway Corporation, to make make the running on proposals to finance and build the $1 billion Alice Springs to Darwin rail line. The NT Government is negotiating with Aboriginal groups for 20% of the proposed line and expects to own 80% of the land required by Christmas *(Fin R, 14 November, p15)*.

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RECENT PUBLICATIONS

Due to the volume of material on native title over October - November and staff shortages in the Native Title Research Unit, this month's segment is again small.

Horstman, Mark. "Black Shadows, White Shadows, Grey Shadows: Does the Cape York Regional Agreement provide a model for the Reconciliation Process?" *Arena Magazine*, Vol 22, 1996: 26-31. Horstman, who was centrally involved in the Agreement, traces the process of brokering the CYRA, from its beginnings in August 1994 when 80 people met in Coen in response to the Wik people's launching of native title claims over 28,000 sq kms of land along the Gulf of Carpentaria encompassing 10 pastoral leases - to its conclusion on 5 February 1996 when the Agreement was signed. Local people were tired of confrontation and ready to pursue practical solutions. As a result, the Cape York Land Council appeals to consider the possibility of co-existence of native title with pastoral leases, and to resolve issues through mediation and negotiation were productive. The resolution agreed at that meeting:

> '.. that pastoral lease holders are entitled to enjoy their rights, industy and lifestyle; that Aboriginal people are entitled to enjoy their rights, industry and culture; that all pastoral leases should be secure against native title claim, provided: - that

traditional Aboriginal people be entitled to access to their traditional lands for traditional purposes, and that these rights extend to pastoral leases where the access does not diminish the rights of pastoral leaseholders; - that government is obliged to preserve and protect these rights through legislation; - that wherever possible, pastoral leaseholders and Aboriginal people with traditional interests resolve issues and conflict through direct negotiation in good faith'

has formed the basis of the Heads of Agreement of the CYRA.

A copy of the Heads of Agreement can be obtained by sending a request and a stamped self- addressed envelope to Colleen Burfitt, Cape York Land Council, POBox 2496, Cairns, QLD 4870. You can access the World Wide Web site about Cape York Peninsula via http:// www.peg.apc.org./-twscairns/capeyork

Joint Parliamentary Committeee on Native Title and the Aboriginal and Torres Strait Islander Land Fund - "The Native Title Amendment Bill 1996 and the Racial Discrimination Act", Seventh Report, December 1996. The report focusses on the following questions: in what ways does the RDA protect native title; what rights under the NTA are modified or extinguished by the amendment proposals; of those rights, which are native title in character and which are not; is the RDA inconsistent with the modification of either kind of right. The minority report, lodged by Senator Kernot and Opposition spokesman on Aboriginal Affairs, Daryl Melham, concluded that the proposed amendments to the NTA as they stand are not consistent with the RDA and with the international Convention on the Elimination of all Forms of Racial Discrimination (CERD), and need to be altered to guarantee the primacy of the RDA and CERD.

Reynolds, Henry. "Pastoral Leases in their Historical Context" Aboriginal law Bulletin, Vol 3, No 81, 1996: 9-11. In this paper Reynolds argues that pastoral leases must be viewed in law in the historical context of their granting. The British Colonial Office established a policy in the 1830s and 1840s of providing continued Aboriginal access to land by inserting reservations in pastoral leases. The Imperial Government felt that as far as possible Aborigines should be withdrawn from colonial legislative systems, and after the granting of responsible government to the colonies, extended the policy of providing Aboriginal access to land through the continuation of the *Imperial Land Waste Act 1855*.

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