

to a private operator; this followed advice that private leasing was no longer an option due to 'Native Title provisions'. (*Newcastle Herald*, 4 Feb, p5)

Annual conference representatives of Western Shires voted for state legislation to extinguish native title on Western Lands Leases granted in perpetuity. The group argues that special concession is required because, unlike other pastoral leases, the Western Lands Leases have no renewal date and were evolved to accommodate the hardships of the area. They can be bought and sold like freehold land. (*The Land*, 20 Mar, p12)

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WIK DECISION

The National Farmers Federation held talks with Prime Minister John Howard to urge him to consider a proposal to extinguish native title on pastoral leases; the NFF also called for confirmation that native title was extinguished on freehold, residential, commercial and agricultural leases; as well the NFF proposed that cities, towns and public land and water resources be quarantined from the Native Title Act. The NFF proposal also includes provisions to ensure that extinguished native title rights were not revived, that the legislation be retrospective and that pastoralists received equal financial assistance as Aboriginal claimants. (*CT*, 1 Feb, p3)*

The Australian Bankers Association is putting together a position paper on the Wik decision which will be used as a guideline by banks dealing with native title issues; but at this stage the ABA will not make any public comment on the issue. (*W Aus*, 1 Feb, p54)

Premier of WA, Mr Richard Court, said State and Territory governments wanted power to resume land subject to native title claims to allow cities and towns to grow and just compensation paid if land was resumed where native title existed; he cited Kalgoorlie, Port Hedland and Broome as examples of towns that had run out of land for expansion of industry and housing. (*WA*, 3 Feb, p6)

ATSIC chairman, Gatjil Djerrkura, told PM John Howard that Indigenous people would not countenance extinguishment of native title rights or amendments to the Racial Discrimination Act. The Minister for Primary Industries, Mr Anderson, refused to back calls from the National Farmers Federation and Coalition premiers to extinguish native title on pastoral leases. (*Aus*, 5 Feb, p4)*

A discussion paper on responses to the Wik decision developed by the states after their January 22 meeting with the Prime Minister was released; it proposes: no native title claims could be lodged after January 1, 2000; law extinguishing native title to be rushed through Federal parliament; native title rights on pastoral leases to be replaced with limited statutory access rights; Aboriginal 'right to negotiate' over future development to be wound back. (*Fin R*, 6 Feb, p 1 and 8)

The Prime Minister, Mr Howard, has told ATSIC that a clear legal definition of native title is the key to resolution over the Wik decision and

that he was sympathetic to a sunset clause for any necessary legislation. He reiterated his belief that all stakeholders must be prepared to make significant concessions. (*Aus, 6 Feb, p3*) The Minister for Resources, Senator Parer, told the ABARE Outlook conference that the Government was inclined to include responses to the Wik decision with the amendments to the Native Title Act already introduced to the Parliament. (*CM 6 Feb, p6*)*

The Federal President of the National Party, Don McDonald, said the National Party will demand security and certainty of title for all landholders and land users as the minimum outcome from the debate on native title. (*Press Release 7 Feb*) The National Farmers Federation welcomed the statement as support for its stance on extinguishing native title on pastoral leases. (*Press Release, 7 Feb*) 14 Aboriginal representatives met with Mr Howard and stated that any negotiations start from the principle that native title not be impaired or extinguished. (*Fin R, 7 Feb, p3*)* Indigenous leaders outlined seven principles to Mr Howard, including opposition to any amendment to the Racial Discrimination Act and a non-discriminatory policy for dealing with property rights. (*Age, 7 Feb, pA3*)* Afterwards the Prime Minister announced a round table discussion of all groups affected by the Wik decision would be convened within a month.

Deputy Prime Minister, Tim Fischer, supported legislation to restore the intention of the 1993 Native Title Act that pastoral leases extinguish native title. He stressed the significance of a joint proposal from the Northern Territory and non-ALP States for the replacement of native title common law rights with a statutory definition of native title. (*W Aus, 8 Feb, p1 and 10*)*

The National Party called for a tax to finance compensation for extinguishment of native title on pastoral leases and boost the \$1.1 billion Aboriginal Land Fund. The call was endorsed by National Party leader Tim Fischer but rejected by Mr Howard who said the National Party's position was not Coalition policy. (*Age, 8 Feb, pA7*)*

Senator Nick Minchin told a conference on the Wik judgment that amending the Racial Discrimination Act was one option that could be considered; in response Noel Pearson said Aborigines were alarmed and concerned that the Coalition would consider any changes to the Act. (*CT, 8 Feb, p1*)* At the same conference Native Title Tribunal President, Justice French, warned that global extinguishment of native title would expose Australia to claims of racial discrimination, regardless of compensation offers: 'the prohibition against racial discrimination is close to a norm of customary international law'. (*CM, 8 Feb*)

Appearing on the Nine Network's Sunday program Mr Howard moved to play down divisions within the Coalition on the Wik question. He refused to rule out higher taxes for compensation despite previously rejecting the idea. He set a four week deadline to resolve the Wik question. (*Age, 10 Feb, pA2*)* The President of the National Party, Mr Don McDonald, and Premier Borbidge reinforced their hard-line stance for extinguishment of native title on pastoral leases. (*Fin R, 10 Feb, p5*) Primary Industries Minister and deputy National Party leader, John Anderson, backed a call by the states for a time limit of 2000 to be put on native title claims but he refused to endorse the party's stance on extinguishment of native title. (*CM, 10 Feb, p6*) *

The editor of the Courier Mail was heartened by the Prime Minister's willingness to participate in round table negotiations and critical of the National Party's stance. 'Significant political and legal issues are not going to be settled rapidly despite calls for certainty. Certainty will not flow from attempting to destroy the native title rights which now exist alongside rights of pastoralists.' (*CM, 10 Feb, p8*) The editor of the Australian warned that any government 'should consider very carefully the implications of removing any common law rights affecting a specific class of citizen.' (*Aus, 10 Feb, p10*)

Aboriginal legal advisers will meet with Federal Government's legal advisers to discuss the Wik decision and resolve differences in their interpretation of the High Court judgment. It was hoped a common framework could be established before a summit of all parties. (*SMH, 10 Feb, p7*) Aboriginal negotiators will attempt to convince the Federal Government that any plan to wind back the Racial Discrimination Act would be found unconstitutional by the High Court, but their strategy of convincing the Senate to block such proposals was made more difficult when Senator Mal Colston made it clear he sympathised with the pastoralists. (*Fin R, 11 Feb, p5*)* Despite concerns that there had not been enough time for consultation of all representative bodies and land councils, ATSIC Native Title Commissioner Geoff Clarke announced that there would be a telephone hook-up to discuss negotiation procedures and the scheduled meeting with government would proceed. (*CM, 11 Feb, p2*)*

An alliance of environmental groups issued a warning that if pastoral leases were to become freehold, extensive environmental damage to Australia's rangelands would result. (*Press release 13 Feb*)

NSW Farmers senior vice president argued that compensation should be borne by the whole community (*The Land, 13 Feb p15*). The National Party president said the Government's response to Wik must establish the right of parliament to make laws and the High Court to interpret them. (*The Land, 13 Feb p3*). The National Farmers' Federation executive director said negotiations such as the Cape York Agreement cannot resolve issues of title (*CT, 13 Feb p8*).

In a speech to the Roundtable Meeting called by the Prime Minister, the Chairman of ATSIC highlighted the seven principles of position put forward by Indigenous leaders. They include non-discriminatory property rights policy, no extinguishment of or impairment of native title, no amendment to the RDA or its principles, respect for High Court native title decisions, no amendments to the NTA which erode existing indigenous rights or of the Indigenous Land Fund and agreement by the Government for a negotiating process for NTA amendments and the consequences of Wik. (*ATSIC press release no date*)

After meeting with the New Zealand Prime Minister Mr Howard said he may have difficulty meeting his planned Easter deadline for a Government response to Wik by Easter. (*Ad, 17 Feb, p12*)* The Social Justice Commissioner acknowledged Mr Howard's willingness to put existing amendments 'on hold' to allow for further talks. (*CM, 15 Feb, p10*)

Michael Mansell from the Tasmanian Aboriginal Centre has said an Aboriginal delegation may lobby internationally for a boycott of the

Olympics if the Wik decision is overridden (*Sunday Tasmanian*, 16 Feb, p2).

Pat Dodson, on *Meet the Press*, responded to comments that the High Court Wik decision 'ignored the Australian people'. (*Illawarra Mercury*, 17 Feb, p5)* The Queensland Premier has called for a change to the High Court composition. (*Sunday Mail*, 16 Feb, p85) The Queensland government is open to compensation payouts to leaseholders who may have been issued invalid leases in Qld since 1994. Crispin Hull argued against the Queensland Premier's criticisms of the High Court for 'making law' referring to earlier judgements on implied states' rights. (*CT*, 22 Feb, p15)

The president of the NFF told the annual conference of the Federation that city freehold titles could be at risk from native title claims following the Wik decision (*CT*, 18 Feb, p5) The Federation's Aboriginal task force chairman stated that the Wik judgment posed 'no immediate threat' although there was a long term need for certainty and for land titles to be clarified. (*CT*, 22 Feb, p2)

The *Courier Mail* traces the origins, significance and ramifications of the Wik case. (*CM*, 22 Feb, p24,25) In other articles Aden Ridgeway discusses the Aboriginal position (*CM*, 26 Feb, p17), Wendy Craik outlines the pastoralists' position and Mark Horstman provides a review of the importance of leases on the environmental aspects of land management. (*CM*, 27 Feb, p13)

The West Australian National Party leader, Hendy Cowan said debate on native title planned for a special federal council meeting may provoke criticism of the party's federal leadership. Mr Fischer said he had been 'expressing publicly the party view on Wik'. (*CM*, 27 Feb, p1)* National Party Ministers Peter McGauran and John Anderson faced criticism from within the party for their lack of support for Mr Fischer's approach. (*Aus*, Feb 24, p5)

Liberal and National Parties are about to agree that legislation dealing with the Wik decision will be through Parliament by June; serious consideration is being given to making some types of pastoral leases immune to native title claims. (*Ad*, 28 Feb, p6)* Senator O'Chee claimed that failure to extinguish native title over pastoral leases could lead to compensation claims from 170,000 leaseholders amounting to \$80 million. (*CM*, Feb 28, p2)

Aboriginal and legal experts predicted that Australia faced international condemnation and international protest that could disrupt the Sydney Olympics if moves were made to overturn the Wik decision. (*WAus*, Mar 1, p2)*

After a special council meeting the National Party called for extinguishment of native title over pastoral leases and voted to support Tim Fischer in his stance against the High Court. (*CT*, 2 Mar, p1)* PM John Howard doubted whether a solution to which all parties agreed could be reached (*WA*, 3 Mar, p11) and warned that some legislation would be required. (*CM*, 3 Mar, p7) George Lombard discusses the options available to the Government and the ramifications of these options. (*CT*, 3 Mar, p9)

A compromise plan being considered by the Federal Government taskforce on Wik includes the option of allowing farming activities as 'permissible future acts' under the Native Title Act, meaning native title holders would have no say over them. Another option involves specifically defining native title rights in the legislation. (*Fin R, 4 Mar, p1 and 8*)

The National Farmers Federation claimed that uncertainty following the Wik decision was preventing farmers from making long term plans for the sustainable development of their farms. (*Press release, 5 Mar*) Similar views were expressed by the Western division of the NSW Farmers Federation who believe that being restricted only to grazing would inhibit the development of alternative activities. (*Barrier Daily Truth- Broken Hill, 6 Mar, p5*) The National Party claimed that taxpayers could be faced with a bill of more than \$80 billion to compensate farmers for the effect of the Wik decision. (*Ad, 5 Mar, p13*)

PM John Howard will reveal his legislative plans on native title at a special meeting with state leaders on March 20. (*CM 8 Mar, p8*)

Former High Court judge Sir Harry Gibbs has signalled his support for federal legislation to overturn the Wik decision. (*Aus, 10 Mar,*)*

PM John Howard announced that he may grant farmers greater access to legal aid to fight native title claims. He believed farmers had a legitimate complaint about the inequality in legal aid compared to Aborigines. (*CT, 11 Mar, p 1 and 2*)* Aboriginal Social Justice Commissioner, Mr Mick Dodson, criticised the statement for misinforming the public because farmers are entitled to legal aid. (*Age, 12 Mar, pA10*) The editor of the Canberra Times supports the need for relaxing the assets test for pastoralists 'if only because so many of them seem to be in ignorance of their own legal relationship to the land.' (*CT, 12 Mar, p10*)

Father Frank Brennan had reservations about the judicial method of the High Court's Wik decision: 'The confusion between the law of extinguishment by crown grant and the fact of extinguishment by action of a lessee renders the decision so uncertain as to be unworkable without complimentary legislation.' (*Aus, 11 Mar, p2*)

MHR for Parkes, Mr Michael Cobb, said the Wik decision was 'crucifying western NSW' and that much of the city of Broken Hill could be the subject of claims because it is on leasehold land. He urged voters to press ALP and Democrat Senators to support Coalition moves to validate leasehold land against native title claims. (*Barrier Daily Truth-Broken Hill, 11 Mar*)

A brief freeze imposed by the Western Lands Commission of NSW on processing applications to alter Western Division pastoral leases has been lifted. However a small proportion of applications seeking to change use from grazing or lease transfers could not be finalised until the Wik issue was resolved. (*Land, 13 Mar, p8*)

At least three State governments (WA, Qld and NT) are likely to reject a compromise plan being developed for the Prime Minister Mr Howard. The plan involves defining by law the activities allowed on pastoral leases. These activities would become 'permissible future acts' but 'right to negotiate' provisions over developments such as mining and tourism would

not change. (*Fin R, 13 Mar, p5*) Senator Boswell said the National Party would not accept the codifying of activities on pastoral leases (*Fin R, 14 Mar, p9*) whilst the party's deputy leader John Anderson hardened his line saying the Government should ensure pastoral leases extinguish native title. (*CM, 15 Mar, p8*) Mr Borbidge supported the National Party stance saying that any compromise plan to define permissible activities rather than extinguishing native title would be unacceptable. (*Aus, 14 Mar, p6*) Mr Mick Dodson said the indigenous community would negotiate with the Government over the proposal but was not comfortable with the prospect of legislation. (*Age, 14 Mar, pA6*) The National Party says the option of codification is unacceptable and a 'legal minefield' saying the 1993 Native Title Act provides for 'extinguishment by the grant of leasehold'. (*Press release, 19 Mar*) The Queensland premier warned of a 'Pauline Hanson like backlash' and Coalition split if the Prime Minister did not satisfy voters. (*Aus, 19 Mar, p4*)* Coalition MPs said they would not modify their demand for extinguishment and rejected the alternative of codification. (*Fin R, 19 Mar, p3*) Queensland National Party Senator, Bill O'Chee has threatened to resign over the issue. (*CT, 20 Mar, p4*) One Editorial suggests Mr Howard favours codification with a sunset provision for claim lodgment. (*Aus, 21 Mar, p10*)

The National Farmers Federation offered to modify their stance against codification to resolve the Wik native title issue whilst still endorsing extinguishment. Aboriginal leaders say that codification of their rights is discriminatory. The Prime Minister has stated that he was 'trying to reach an outcome that would deliver justice and security of title to both farmers and Aborigines'. (*Ad, 21 Mar, p7*) The NFF president said codification of farmers' rights would be acceptable only if it offered exclusive occupancy rights for leaseholders through extinguishment of native title. (*Press release, 24 Mar*)

The Prime Minister said he would extend the Easter deadline if it assisted a breakthrough. He described Wik as the 'predominate domestic challenge'. Tracker Tilmouth of the Central Land Council and a member of the National Indigenous Peoples Working Group on Native Title, said codification was a possible solution (*CT, 22 Mar, p3*). Mr Howard suggested if Aboriginal people agreed to Native Title Act changes a non-extinguishment option was possible. (*CM, 22 Mar, p2*) The working group has indicated it will make concessions but not allow for extinguishment of native title on pastoral leases. (*Ad, 22 Mar, p12*) The editor of the West Australian believes government calls for extinguishment denies basic human rights, would affect the reconciliation process and should be rejected by the Prime Minister. (*WA, 22 Mar, p12*) National Party pressure on Mr Howard in favour of extinguishment over codification continues to increase (*CT, 22 Mar, p16*)* threatening a Coalition split. Senator O'Chee has prepared a discussion paper argues that procedural rights of favouring Aborigines are unfair to others. (*CM, 22 Mar, p2*)

The National Farmers Federation has launched a television advertising campaign to highlight legislative uncertainty they believe has been created by the Wik decision. (*Press release, 20 Mar*) The Federal Opposition and Democrats have labelled the NFF television ads as racist, with Labor calling on the Attorney General to withdraw them *SMH 21 Mar, p1*)* Church leaders and welfare groups have called for the removal of the NFF ads saying they are racist and misleading. (*CM, 25 Mar, p4*)* ATSIIC

Chairman Gatjil Djerrkura criticised the NFF advertisements as divisive and at odds with reconciliation. (*AAP, 26 Mar*) Similar views were expressed by the Deputy Chairman of the Council of Reconciliation, Mr Ian Viner. (*LE, 25 Mar, p12*) PM John Howard rejected calls to condemn the NFF advertisements. (*Aus, 27 Mar, p4*)* Former National Party leader Ian Sinclair criticised the NFF advertisements. (*DT, 27 Mar, p20*)* The editor of the Canberra Times described the advertisements as 'calculated to inflame racial disharmony'. (*CT, 27 Mar, p10*) Heather Brown believes the campaign has tagged the NFF as a voice from the distant past and states that 'for the first time in my life I have felt embarrassed to be a farmer.' (*CM, 29 Mar, p19*)

The Federal Government response to Wik, outlined to state premiers, included a sunset clause on claims, more limited right to negotiate and changes to tax provisions on primary production. (*Age, 24 Mar, p1*). The government's position is further outlined in an article by Laura Tingle. (*Age, 25 Mar, p11*)

The Federal Government has been accused of giving farmers an advantage in native title talks by keeping an options paper from Aboriginal negotiators which had earlier been given to the National Farmers Federation. (*WA, 26 Mar, p10*) Aboriginal leaders imposed a boycott on further native title talks involving the National Farmers Federation. (*Age, 26 Mar, pA5*)* Earlier Prime Minister John Howard met with Aboriginal representatives and made it clear that he was working on a legislative package which stopped short of outright extinguishment of native title on pastoral leases. (*CM, 26 Mar, p7*)*

Mr Rick Farley, a former Executive Director of the National Farmers Federation, believes that the farm sector risks dealing itself out of the native title debate in the same way as the mining industry did in 1993. The NFF in harness with the National Party are the only ones seeking extinguishment of native title on pastoral leases and is locking itself into a position before true political debate has begun. (*CM, 26 Mar, p15*)

Senator Bill O'Chee discusses the National Party position which relies on giving Aborigines freehold title over crown land in return for extinguishing native title claims on public land such as beaches, stock routes and no rights to 'minerals, air or water'. (*Fin R, 27 Mar, p19*)

The West Australian government is pushing the Federal Government to replace common law native title rights with a statute codifying Aboriginal access to land. (*WA, 27 Mar,)* Senator Ron Boswell revealed that opposition from farmers and the National Party has forced the Prime Minister to reconsider codification as a solution to the Wik decision. (*Aus, 31 Mar, p4*)

Noel Pearson writes that 'the pressing policy and legislative challenge is: if Aboriginal people agree that the existing right of leaseholders should be confirmed- what exactly are these "existing rights"...but not all of the questions about native title can be answered in the legislation...the problem is that those who are troubled by the "workability" of the legislation have chosen what they think is the most efficient path to certainty: extinguish native title so you don't have to deal with it.' (*CM, 29 Mar, p22*)

The Labor Party and the ACF accused farmers of making a 'land grab' by

pushing for native title to be extinguished on pastoral leases. Opposition spokesman on Aboriginal Affairs, Mr Daryl Melham, said that 'extinguishing native title would mean billions of dollars in compensation and effectively give pastoralists freehold title for the first time.' (*Aus*, 31 Mar, p6)*

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RECENT PUBLICATIONS

The Aboriginal Law Bulletin has a new title: *Indigenous Law Bulletin* and its April 1997 issue is a special Wik issue. The background to the Wik case is provided in two articles by Neva Collings and David Martin; Richard Bartlett provides legal analysis of the term 'extinguishment'; Garth Netheim discusses possible changes to the Native Title Act 1993 in the wake of Wik; the Ngarinyin people of the Kimberley give their response to the decision; Lois O'Donoghue's speech to the National Press Club which covers events of the past 7 years is reprinted and the position of the Indigenous negotiating parties as at February 6 1997 is also reprinted.

Butterworths have published: *The Wik case: issues and implications* edited by Graham Hiley. It contains the text of the judgement with commentary from various perspectives. The commentary considers the impact of the judgment on the various stakeholders and seeks to analyse the implications for each, and for Australian land law.

The Centre for Aboriginal Economic Policy Research at ANU has published the papers presented at a conference in September 1996. *Fighting over country: Anthropological perspectives* is edited by D.E. Smith and J. Finlayson and costs \$20. Available from CAEPR. Phone Faye Liu on (06)279 8211 or fax (06) 249 2789.

A new journal *Northern Analyst* is published by the North Australia Research Unit in Darwin. It replaces *NARU news* and will now be available on the Internet at: <http://online.anu.edu.au/naru/Welcome.htm>. Issue No. 2 of Northern Analyst contains three papers relevant to Native Title researchers especially those interested in Regional Agreements. Marcia Langton writes on *Estate of mind: The growing cooperation between Indigenous and mainstream managers of North Australia Landscapes and the challenge for educators and researchers*; Richie Howitt on *Getting the scale right: the geopolitics of Regional Agreements* and Greg Crough on *Native title and Regional Agreements*. For those without access to the Internet hard copies of the journal are available from NARU. Ph: (08) 8922 0066 or Fax: (08) 8922 0055.

The NTRU at AIATSIS has published two papers in our issues papers series: No.15: *Neither rights nor workability: the proposed amendments to the right to negotiate*, by Liz Keith and No. 16: *Racial non-discrimination standards and proposed amendments to the Native Title Act*, by Jennifer Clarke. No 15 is now available on this web site (<http://www.aiatsis.gov.au/ntpapers/ntip15.htm>). No.16 will soon be on-line.

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