

claimants seeking \$2.7 million in compensation, protection of heritage sites and employment. (Aus, 16 June, p17)

Ross Mining expects to start construction of its Timbara gold project within a month and begin pouring gold from production in February next year. This follows a signing of a compensation agreement relating to a native title claim by the Tabulam Bundjalung. (Aus, 28 July, p72)\* The NSW Aboriginal Land Council said the agreement would help the Bundjalung people by funding services, education, training, employment and community works. Environmentalists are opposing the mine. Council executive director, Mr Aden Ridgeway, said that the agreement should not be taken as a blanket endorsement of mining in Bundjalung country. (SMH, 26 July, 13)

### **South Australia**

The South Australian Chamber of Mines and Energy identifies native title as 'the issue of greatest concern'. Some companies claim they have been delayed through uncertainty and have been forced to change exploration plans due to 'access problems', but rapport with Aboriginal communities is growing. Mr Bob Goreing of the SA Chamber of Mines and Energy said 'we have excellent relationships building up' with communities. (Ad, 5 July, p39)

### **Maralinga**

Maralinga, once the site for British atomic bomb testing, is to be turned into a tourist destination with caravan and camping facilities. South Australian Aboriginal Affairs Minister, Mr. Brown, said the ambitious plans would go ahead after the site was returned to its traditional owners. Land at Emu, west of Maralinga Village, will be returned to the Maralinga Tjarutja Aboriginal community as soon as the contamination in the area is removed. The SA Government has given a commitment that these lands will be added to community freehold lands once the clean up is satisfactorily completed. (Ad, 17 July, p3)\*

### **Gawler Craton**

Greenfell Resources announced a two year clearance access had been negotiated with the Aboriginal communities for four tenements through the South Australia Aboriginal Land Rights Movement. Under the agreement which covers all obligations of the Federal and State Native Title Act as well as Aboriginal Heritage legislation, Grenfell will reimburse the communities for the surveying costs, but is not required to make any up front payments. While Grenfell is the first company to execute an access clearance agreement covering Native Title issues, it is thought that other companies are close to settlement. Grenfell Director, Nick Limb, said that the agreement provided an 'excellent model' for successful negotiations between Aboriginal groups and mining companies. (Aus, 24 July, p26)\*

## **AMENDMENTS**

The Government has agreed to an Opposition request from Gareth Evans to meet to develop a co-operative approach to native title. Evans said the 10 Point Plan was unworkable and would be challenged in the courts and opposed in the Senate. Both parties have said a double dissolution would damage the nation. The Opposition is opposed to extinguishment but legislation giving certainty to title, validated in anticipation of a different Wik decision,

providing a higher threshold test and clearer right to negotiate without breaching the Constitution, is open for discussion. (*Aust, 2 June, p1*)\*

Criticised by the Federal Court Judge Justice Sackville as ‘ambiguous and incomprehensible’ and possibly in breach of the Racial Discrimination Act (*Age, 2 June, p7*)\*, the 10 Point Plan has been defended by John Anderson, Primary Industries Minister as a ‘practical solution’. (*Aust, 2 June, p1*) Justice Sackville said point four, on rights to conduct ‘all elements of primary production’, involved a ‘series of ambiguities’. (*Fin R, 2 June, p4*)

The Government rejected Opposition assertions that the 10 Point Plan may be unconstitutional saying there is nothing in the plan contravening the Constitutional ‘race power’, it is not proposing blanket extinguishment of native title on pastoral leases and it recognises the common law right to claim native title on pastoral leases. Senator Minchin said the Labor Government, under the race power, included provisions in the Native Title Act detrimental to native title holders. Upheld by the High Court in 1995 these included the validating regime, provision for compulsory acquisition of native title, allowing states and territories to confirm ownership of natural resources, allowing a range of government activities to affect native title and requiring claimants to pass a registration test. (*Press release, 2 June*)

The Prime Minister ruled out changes to the Wik 10 point plan in a meeting with tomorrow’s meeting with the Opposition. (*CT, 3 June, p1,2*)\* The United Graziers association executive director, Michael Prendergast said Mr Howard was ‘confirming farmers’ worst fears that he couldn’t be trusted on native title’. Farmers were concerned that Mr Howard would go for a short term ‘political fix’ and were strongly opposed to codifying rights. (*CM, 3 June, p4*)

Over 2000 people have signed an electronic Wik petition calling for Native Title Act amendments to comply with international non-discrimination principles and to promote reconciliation. (*Press release, Senator Stott Despoja, 3 June*)

Opposition members outlined key points for the meeting with the Government on the 10 Point Plan. They believe the plan is unworkable and implementing it would trigger a High Court challenge. They have concerns over the definition of allowable pastoralist activities and winding back of the right to negotiate for native title holders. The Prime Minister claims it strikes a balance between Aboriginal and pastoralist rights. (*Fin Rev 4 June, p4*) Daryl Melham, Opposition spokesperson on Aboriginal Affairs, doubted the meeting would make progress. In the Senate, the Democrats, the Greens and Independent Brian Harradine have expressed reservations about the plan. (*Her Sun 5 June, p10*)

Mr Beazley said the Opposition ‘fundamentally disagreed’ with the Federal Government’s Wik ten point plan and believes the government can only legislate under the ‘race’ power in the Constitution if the effect is ‘beneficial’ to Aboriginal people. By widely defining allowable pastoral activities, upgrading of pastoral leases, extinguishment of native title by States and removal of native title holders’ right to negotiate over mining, the plan cannot be construed as beneficial. (*Fin Rev, 5 June, p7*)

Talks between the Prime Minister, Senator Minchin, Aboriginal Affairs Minister Senator Herron and Opposition leader Mr Beazley, Mr Gareth Evans and Opposition Aboriginal Affairs spokesperson, Daryl Melham failed to reach agreement on the Wik plan. Disagreement centred on the possibility of a High Court challenge with Mr Howard standing by the package as the 'appropriate response'. Mr Beazley said the talks were 'useful and civil' but a response would not be made until the legislation was examined. (*CM, 5 June, p2*) A further meeting will be held after the Wik legislation has been drafted. The Prime Minister said he would not accept any changes to key elements of the plan and Mr Beazley said the Opposition was determined that 'at the end of the day we should emerge with decent legislation which creates certainty for all parties'. (*Aus, 5 June, p2*)

Greens Senator Dee Margetts said the government's response to Wik was based on two key myths, that the 1993 Native Title Act extinguished native title on pastoral lease and that the pendulum had swung too far in favour of Aboriginal people. She said Senator Minchin had acknowledged that 'in the case of pastoral leases which were validly granted, there will be no extinguishment of native title' and that the High Court judgement says no more than Aboriginal people may have some remnant rights in some pastoral leases where the nature of the leases did not result in Aboriginal people being excluded from the land. Senator Margetts said the Prime Minister's comment was fundamentally racist in its context, drawing a parallel with responses to other High Court determinations with respect to issues such as trusts and mortgages were not seen as swinging the pendulum too far in favour of banks. (*Press release, 5 June*) Senator Margetts criticised the former Labor government for encouraging the belief that the Native Title Act gave something extra to Aboriginal people and Torres Strait Islanders and the NFF for not fully informing members about the implications of the Wik decision. (*West Aus, 6 June, p4*)

Senator Minchin refuted Senator Margetts' claims that the government assumed or claimed the Native Title Act extinguished native title on pastoral leases. He said that the Act was adopted on the presumption that under common law pastoral leases extinguish native title and that therefore the Act would not apply on pastoral leases. (*Press release, 6 June*)

The Prime Minister said the first draft of the Government's Wik 10 Point Plan legislation was being prepared in consultation with Commonwealth and State. Mr Howard said it would not include blanket extinguishment. (*Daily Tele, 9 June, p2*)\* Opposition leader, Kim Beazley, said it was a 'national tragedy' that the next election would be fought on the issue of Wik. (*Aus, 9 June, p3*)

Noel Pearson agrees with Mr Beazley's comment that the fourth group of players to governments, industry and indigenous people are the Australian tax-payers. In Cape York where gross income from cattle is about \$5 million per annum he says the taxpayers' bill for extinguishment could be \$1-2 billion. He defines four categories of costs, legal and administrative, government compensation costs, compensation costs to native titleholders for extinguishment and possible costs paid to government on behalf of leaseholders for upgrading to freehold under Queensland National Party policy. Pearson suggests an alternative 'just outcome' could be secured for pastoralists and Aboriginal people in a 'financially neutral way'. (*CM, 7 June, p32*) Gerard Henderson says the Prime Minister has given different

messages to different audiences when explaining implications of compensation and upgrading of pastoral leases to freehold. (*SMH, 10 June, p19*)

A High Court challenge based on section 51(26) of the Constitution, the ‘race power’, could postpone the certainty sought by government following the Wik decision. The section provides for the Commonwealth to make special laws for Aboriginal people. Professor Tony Blackshield said the restricted view of the power, that its use must be of ‘benefit’ to Aboriginal people is ‘very controversial’ and a reasonable approach would be to look at the effect of the law as a whole rather than the effect of every provision. A challenge in the High Court relating to the Hindmarsh Island affair may clarify the disagreement over interpretation. (*Aus, 10 June, p5*)

Mr Howard replied to a letter from grain-growers and graziers following the Longreach meeting saying his 10 Point Plan did not discriminate against rural landholders and that the legislation will confirm that freehold title, residential and many agricultural leases extinguish native title. He said that the legislation will allow government infrastructure to be built, not withstanding native title; allow the removal of the right to negotiate regime in cities, towns and on pastoral leases and; allow claims to continue in relation to vacant Crown land and over some leasehold land. Mr Howard also said that claims for exclusive possession will not be able to be made over pastoral leases. He said in the letter ‘it is my intention not to accept any amendment to the basic principles of the 10 Point Plan in the Senate’. (*CM, 12 June, p6*)

The National Farmers’ Federation said that it has always supported access to pastoral leases for traditional purposes but a statement on ABC radio by David Byrne of the Cape York Land Council showed that ‘claimants view pastoral leases in a much more commercial context’ with most claiming exclusive possession’. NFF President, Donald McGauchie, said some recent claims with the NNTT may be a threat to farmers’ activities and the environment. (*Press release-NFF, 12 June*)

ATSIC representatives in the NT have rejected the 10 Point Plan in a meeting of four regional councils in the Northern Zone. (*NT News, 12 June, p6*) The NSW National Party will move a resolution to agree to Mr Howard’s Wik plan at a state conference. (*Aus, 13 June, p3*)\*

NNTT member, Mr Sean Flood has stood down from the Tribunal after publicly denouncing the 10 Point Plan which he said amounted to ‘complete dispossession’ and ‘massive breaches of human rights’. (*Fin R, 13 June, p3*)\*

The Australians for Native Title and Reconciliation launch was addressed by former Senate candidate Peter Garrett on 16 June at Circular Quay. The group is opposing the 10 Point Plan. (*DTele, 13 June, p13*)

Mr Howard denied claims that he has sent ‘different messages to different audiences’. He said Cabinet had agreed that the Commonwealth will pay 75% of the costs to the states and territories for compensation arising from implementation of the 10 Point Plan, subject to conditions, and that he had written to state leaders about the policy. He said that it was fair

that native title holders be compensated if they must lose native title rights, that the Commonwealth contribute to compensation costs and that pastoralists pay for any betterment to their property. (*SMH, 14 June, p42*)

Mr Howard will begin consultations on the first draft of legislation based on the 10 Point Plan next week. (*WAus, 14 June, p35*)\* Mr Fischer said at the NSW National Party state conference that Mr Howard's Longreach commitments would be kept. They include no restriction on pastoralists to carry out primary production activities, no negotiating rights for Aboriginal people in relation to primary production, Government control over waterways, Aboriginal access to pastoral leases only by arrangements where native title has not been determined and a sunset clause for native title claims. Backbencher Michael Cobb said the party had to come to terms with 'living in the real world' and support the 10 Point Plan, and that native title was a common law right. He was supported by party president Mr McDonald and deputy leader John Anderson. (*WAus, 14 June, p2*)

The Federal Government dismissed Opposition legal advice that the race powers of the Constitution can only be used to make laws that are beneficial to Aboriginal people. Senator Nick Minchin said that Labour's legal advice was flawed. He said that the question of detriment would not arise because the nature of the Wik legislation would be beneficial overall. The legislation will be presented in draft to the Prime Minister today. Senator Minchin said that it would preserve the High Court's ruling that native title and pastoral leases could co-exist. (*Age, 16 June, p6*) WA Greens Senator Dee Margetts warned that the track record of the ALP may lead the Greens to negotiate with the government over its native title plan. (*Aus, 16 June, p2*)

Proposed Wik legislation has been approved by the Coalition party room although Senator O'Chee and Mr Bob Katter are yet to indicate agreement. The government has indicated legal advice also says the 1967 referendum gave the commonwealth power to pass legislation affecting Aborigines only for their 'benefit'. (*CM, 25 June, p2*)

Queensland Premier Rob Borbidge is expected to support the Federal Government's Wik legislation. This would overcome the final Coalition hurdle to the Wik legislation. (*Aus, 2 July, p2*)\* Mr Borbidge announced that the federal Wik legislation would exclude nearly 3000 leases from native title claims. A spokesperson for Senator Nick Minchin said that these leases would 'probably' go on the exclusion schedule, but no final list has been approved. (*Fin R, 2 July, p3*)

Former Prime Minister Gough Whitlam yesterday called the Government's 10-point plan in response to the Wik judgment potentially the 'most disastrous and shameful' chapter in Aboriginal history. He said that if legislation proceeds without further negotiation it would postpone justice. 'Justice will ultimately prevail, but in the meantime, unless there are negotiations now, on the basis of acceptance of the law, we shall have submitted ourselves to endless litigation before our courts and shame before the world'. (*Aus, 3 July, p2*)

Mr Geoff Clark from the National Indigenous Working Group on Native Title said yesterday that their arguments have had no impact on the Government. 'We will now concentrate on

our international and domestic efforts to gather opposition to the Wik legislation'. The group is now working on amendments to the native title legislation that can be moved in the Senate by opposition parties and independents. (*Age [Mel], 3 July, pA2*)

The National Farmers Federation said that Aborigines in their fight against the Wik legislation, wanted to control farms, not gain access to pastoral leases for traditional activities. Mr Donald McGauchie, the NFF president, said: 'What they want is the land, the power to control that land, or compensation, and that is why their arguments have been so fierce and at times so extreme'. (*Age, 4 July, pA8*)\* Mr McGauchie's attack follows a Federal government briefing to the NFF on details of the draft legislation to implement Howard's 10 point plan. The Australian Conservation Foundation said the 10 point plan has disturbing implications for the future of land management in Australia. In the process of removing Aboriginal rights it would provide more rights to developers who would be able to propose and attempt 'many more inappropriate land uses'. (*CM, 4 July, p8*)

Former Liberal Prime Minister, Malcolm Fraser said yesterday that the Federal Government should not allow pastoralists to upgrade their leases to freehold. Mr Fraser commented that low land prices would allow pastoralists to upgrade their title, but taxpayers would pay possibly substantial compensation to Aboriginal people whose title was extinguished. Senator Minchin, parliamentary secretary responsible for native title, replied that 'States have always been responsible for land management in Australia and have always had the power to upgrade titles and compulsorily acquire land'. The Commonwealth will enable States to use this power by their agreeing to pay 75 per cent of the costs of compensation. (*Fin R, 8 July, p8*)\*

In response to Mr Fraser's criticism of the Government's response to the High Court's Wik decision, Mr Howard stated that Mr Fraser did not understand the detail of his 10 point plan on Native Title. (*SMH, 9 July, p8*)

The Howard Government has published its proposed legislation to deal with Native Title. Native Title holders could previously negotiate at both the exploration and development phases. It will now be a once-only right and this should be maintained for all Native Title claimants once they pass a strict threshold test. (*Aus, 11 July, p9*)

The Government wants to give iron clad certainty to all people granted titles before the Wik decision. It also wants to be able to deliver ordinary municipal services and to regulate water and air space with certainty and without native title hassles. Any interference with native title would be compensated on just terms. (*Aus, 11 July, p9*)

The proposed amendments to the Native Title Act will confirm extinguishment of native title, not just on freehold, but on any other tenures that carry an automatic right of up-grading freehold. The only title holders who may be subject to co-existing native titles are those who do not have a right to upgrade and whose tenure is non-exclusive. The Native Title Act guarantees pastoralists the right to renew leases and State Government power to authorise primary production activity or farm-stay tourism without having to speak to a Native Title holder. (*Aus, 11 July, p9*)

Mr Ray Robinson, NAIDOC Aboriginal person of the year and Deputy Chairperson of ATSIC has said that the biggest problem for Aboriginal leaders in the next year is the Prime Minister's 10 point plan on Native Title. He also stated he had proposed his own 10 point plan which offered a compromise. *(CM, 12 July, p9)*

At a march to celebrate the end of NAIDOC Week in Melbourne, ATSIC member Geoff Clark told Kooris and other marchers, that the 10 point plan was a 'tool of oppression'. Mr Clark also stated that the onus on Aboriginal people to prove continuous association with the country to gain native title was absurd given Koori's had been locked out of many places for more than 20 years. He said 'this 10 point plan is legal dispossession of Indigenous people if it goes through in its unamended form'. *(HS, 12 July, p15)\**

Queensland Premier Rob Borbidge has expressed doubt that the Federal Government's draft legislation on Wik will get through the Senate. *(CM, 12 July, pp 21,22)*

Rural lobby groups are focusing on areas they claim still leave them short of promises made by the Prime Minister. Concerns are likely to gain a strong forum at the National Party's Queensland conference this week. QLD Grain Growers Association President, Ian McFarlane, said 'the main concern was the ability the legislation could give claimants to claim title over land they had no existing association with'. He said that Mr Howard had assured pastoralists at a meeting in Longreach in May, that claimants would need a 'current, continuous, physical link' with the land they were claiming. *(Aus, 17 July, p2)\**

A member of Britain's Human Rights Committee, Mr Godman, criticised the Government's proposed legislation. Senator Herron said that Mr Godman had only heard one side of the story and dismissed concerns about Australia's handling of the Wik issue. *(Tel M 24 July, p11)*

ATSIC's Chairman, Gatjil Djerrkura, has said that the proposed Native Title Amendment Bill is an attack on indigenous rights that will only cause further uncertainty and division. He says that native title is not a creation of the Native Title Act - it is the expression of the importance of traditional lands to indigenous communities and that discussions with the government earlier this year failed to develop into real negotiations that could lead to the protection of native title interests. Native title interests can range from concern about over-fishing and the impact of pollutants to access to ground water resources for community use. Mr Djerrkura lists the key concerns that ATSIC has with the implementation of the 10 point plan as:

- The validation of pre-Wik acts
- Proposals to confirm the forms of tenure that extinguish native title - seen as significantly pre-empting the common law recognition of Indigenous rights
- That the proposal based on the 'primary production' definition will permit, on non-exclusive agricultural or pastoral leases, many activities associated with primary production with higher impact on the land
- That the provisions dealing with the claims process include the imposition of time limits on the processes of the Act

- That the approach to statutory access rights takes no account of the dispersal of Aboriginal people from pastoral leases
- That the proposed amendments regarding water management permit de facto extinguishment of native title to onshore and offshore waters by ensuring that non-indigenous interests always take precedence. (*WAus, 26 July, p24*)

Gareth Evans said that the Opposition's bottom line on Wik is that there must be no defacto extinguishment and no undermining of the right to negotiate, particularly in relation to mining interests. (*Fin R, 28 July, p17*)

Senator Nick Minchin, the parliamentary secretary who has special responsibility for native title, dismissed as absolutely ridiculous calls by the National Aboriginal and Islander legal service secretariat for mediation by the United Nations or New Zealand to resolve the Wik dispute. ATSIC head Geoff Clark said 'the 10 point plan was not the product of negotiations with the indigenous people'. (*CT 31 July, p2*)\*.

## **GENERAL NATIVE TITLE ISSUES**

### **National**

The federal Opposition and Democrats have called in Parliament for the names of pastoralists receiving legal aid for native title cases to be disclosed. The Attorney General declined to guarantee that wealthy pastoralists or groups had received assistance saying names are protected by privacy legislation and confidential. (*Sun Age, 1 June, p7*)

In a letter to the editor (*Aus, 6 June, p8*) Hal Wootten QC responded to criticism of Aboriginal leaders' public and media behaviour. He said the media often seek controversial comment in favour of in depth interviews. Aboriginal leaders represent a community 'deeply ruptured and hurt'. In the Wik debate their constant but ignored refrain was to 'please sit down and let us talk things out.' 'The symbols of the Aboriginal struggle are not of violence and rejection but of a peaceful appeal to the humanity of the non-Aboriginal community'. (*Aus, 6 June, p8*)

Helen McInerney of the NNTT has commented on the failure and refusal to negotiate land claims outside the court system. Ms McInerney said that whilst it is perfectly reasonable for parties to have legal representation, lawyers and peak bodies were being used increasingly by pastoralists in native title land claims and some farmers groups have advised members not to attend mediation. A breakdown in mediation means the case must go to court. (*HS, 11 June, p15*)

Robert Thorpe failed in the High Court to have it declared that the Commonwealth had a special or fiduciary obligation to indigenous people. He hoped the Court would request an advisory opinion from the International Court of Justice. (*CT, 13 June, p4*)

Greater autonomy for the Torres Strait Island area has been granted with the passing of the ATSIC Amendment (TSRA) Bill which will give the Torres Strait Regional Authority a