

# Queensland

## Century Zinc Mine

Century Zinc Managing Director, Ian Williams, said miners negotiating native title agreements will continue to face conflict with Aboriginal communities over the scope of compensation unless assisted by community leaders. Mr Williams said that the need to deal specifically with native title claimant groups in respect of the project area, while also attempting to provide economic development opportunities for others living in the same region, had potential to cause conflicts in communities and would continue to be a dilemma for the industry. Mr Williams argued that Aboriginal leadership could do more to help establish a sensible balance between native title and regional aspirations on this issue. (*Aus, 15 Sept, p29*)

## Ely Bauxite Mine

A landmark Native Title agreement with Cape York Peninsula Aboriginal communities, has approved development of ALCAN aluminium's \$200 million Ely bauxite mine. The Director of Ely, Paul Clough, said a comprehensive but unsigned final agreement was now being circulated within the Mapoon and Napranum communities located just north of Weipa. Mr Clough said ALCAN supports the communities aspirations for land. (*Aus, 6 August, p25*)

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# South Australia

## Merritt Mining and Maralinga

Merritt Mining has secured a further five exploration licences in South Australia's Gawler Craton, bringing its total to twelve. The licences granted cover 6980 sq km of Maralinga lands. Merritt Mining Managing Director, Peter Andrews, said the land holdings showed similar characteristics to the gold and copper mineralisation found in Olympic Dam and had the potential to host similar significant ore deposits. The licences were granted following a year of negotiations with the Maralinga Tjarutja people which resulted in access clearance for the land in May. Mr Andrews said he hoped to begin exploration and calcrete sampling before December, with an access clearance program to be devised in conjunction with Maralinga representatives and anthropologists next month. (*Aus, 11 Sept, p27*)\*

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# AMENDMENTS

Opposition Leader, Kim Beazley, predicted that the 'devil' in the Native Title Amendment Bill 1997 'will be in the detail'. It was noted that the new legislation leaves the States and Territories with extensive powers to run their own native title regimes and allows a great deal of discretion for the Federal Minister. (*Rep, 1 August, p1*)

The State Opposition has joined the NSW Farmers Association calling on the Premier Bob Carr to list perpetual crown lease land in NSW on the schedule of exclusive tenures. (*Land, 7 August, p3*)

The National Indigenous Working Group (NIWG) has said that they will challenge the proposed amendments in the High Court. Senator Nick Minchin has indicated that the Coalition will not accept substantial changes to the legislation. (*Age, 9 August, pA10*)\*

Members of native title representative bodies at the NIWG meeting said Prime Minister John Howard and Senator Nick Minchin were misleading the public by suggesting that they had conducted meaningful consultations with indigenous people. (*Mer, 9 August, p4*)

Leader of the Democrats, Senator Cheryl Kernot, has indicated that the Democrats will vote against the Federal Government's 10 point plan when it reached the Senate. Senator Kernot said the Democrats were committed to co-existence and regional and site specific land claim agreements. A spokesperson for Senator Kernot said a final decision on how they would vote would depend on the legislation presented to the Senate, but they had concerns with aspects of the plan in its current form. (*CT, 11 August, p2*)\*

National Party Federal President, Mr Don McDonald, told the WA National Party Convention that the Prime Minister's credibility depended upon his amendment plan passing through the Parliament without compromise. (*Age, 11 August, pA3*)

Aboriginal representatives from the National Indigenous Working Group condemned the proposed amendments as a clear breach of the *Racial Discrimination Act 1975*. The Greens and Democrats have said that they will not support the Bill. (*WA, 11 August, p26*)

Labor has not ruled out supporting the Federal Governments' Amendments Bill, providing major changes are made to the legislation. Opposition Aboriginal Affairs spokesperson Daryl Melham said the ALP was seeking more detail on the legislation and legal advice on possible amendments. It would also examine the outcome of the public hearings on the Bill before setting a formal position. (*WA, 12 August, p22*)

Shadow Treasurer, Gareth Evans, told a National Farmers Federation conference he was confident the differences between Aboriginal people and farmers on native title could be resolved with 'a genuine effort of goodwill'. Mr Evans said it was not a concluded Labor Party position, but a possible way of resolving the debate. (*Aus, 13 August, p6*)

The Federal Opposition asked for pastoralists' support on native title, offering them a three-tier solution. The offer is considered a signal that the Opposition may back away from a hard line on the Amendment Bill, and may support the removal of the right to negotiate and payment of compensation for the continuation of farming activities. (*WA, 13 August, p10*)\*

The Coalition has suggested that the New South Wales Labor Government will support the Amendment Bill and will increase pressure on

the Federal Labor Party to drop its opposition to key elements of the legislation. If the Senate blocks the Bill, the Prime Minister, John Howard, will then have a trigger for a double-dissolution election in 1998. (*Aus, 21 August, p2*)

Democrats leader, Senator Cheryl Kernot, outlined four principles to guide the party in considering the legislation. The Democrats will not agree to: the upgrading of leasehold status to freehold status; the removal of the native title holders right to negotiate; a sunset clause on native title rights: or 'direct or defacto' extinguishment of native title rights that co-exist on pastoral leases. (*Age, 22 August, pA8*)\*

A draft timetable for the Joint Parliamentary Committee on Native Title, shows public hearings are scheduled for only four days in Canberra. If it is believed that the committee has not had enough time to consider the amendments the Government risks the possibility of the Senate calling its own inquiry. (*Age, 23 August, p8*)

The National Farmers' Federation has accepted much of the Coalitions planned amendments. Chair of the NFF's Aboriginal Task Force, John McKenzie, said the Federation still wanted changes to the Bill but its campaign of blanket opposition had ended. (*CM, 23 August, p5*)\*

Opposition Leader, Kim Beazley, said it was still possible to have a workable solution to native title issues that satisfies pastoralists, miners and Aboriginal native title claimants. Mr Beazley called on the Government to join the Opposition in "an approach of goodwill" and said Labor did not want a double dissolution on the issue. But he stressed that Labor would not "walk away from the issues of principle" involved in protecting Aboriginal native title rights contained in the Wik High Court decision. (*Aus, 25 August, p2*)

Environment Minister, Senator Robert Hill, said it was important that the Amendment Bill become law during this session of Parliament. The draft legislation was still to go before the Joint Parliamentary Committee on Native Title but there would be time for a couple of months of debate. (*WA, 25 August, p4*) Senator Hill argued that community pressure would persuade the Senate to pass the legislation. (*Tel M, 25 August, p8*)\* The government has affirmed that any amendments proposing substantial changes to the plan would be rejected. (*Ad, 25 August, p7*)

The Federal Government is concerned to ensure leases are only be added to the schedule of exclusive tenures if the legal advice on the exclusive tenure status of the leases is highly credible. The party also fears that including the leases within the proposed schedule without a clear cut legal ruling that they provide exclusive tenure, would increase the risk of a High Court challenge to the legislation. (*Aus, 26 August, p2*)

The Federal Opposition called on the Chair of a Joint Parliamentary Committee on Native Title, and grazier, Mr Warren Entsch, to stand aside for conflict of interest reasons. (*Fin R, 27 August, p3*)\*

A joint meeting of Queensland National and Liberal Party members, in Canberra, approved the Native Title Amendments. National Party Senators said the bill would make it harder for Aboriginal people to claim land by requiring them to prove a 'current physical connection to land

being claimed'. (CM, 27 August, p2)

The amendments to the native title act, it has been argued, will validate leases covering 90 percent of Western Australia's south west land division and are said to satisfy WA Government demands for certainty. (WA, 27 August, p9)

More than 200 forms of property lease in Victoria, ranging from pastoral leases to football clubs, scout halls and yacht clubs have been included in the schedule of exclusive tenures. (Age, 27 August, pA3)\*

The Prime Minister agreed to meet a special delegation from the NSW National Party to discuss whether certain NSW pastoral leases should be included in special protection arrangements under the Bill. This meeting follows intervention by Deputy Prime Minister, Tim Fischer. (Aus, 29 August, p6)

Queensland National Party Executive Director, Ken Croke, expressed discomfort with the proposed amendments to the Native Title Act. Mr Croke said party leaders would consider their formal position at a meeting in Canberra. Until then, Queensland Federal MP's could not guarantee support. Mr Croke stated that the Prime Minister had promised security to pastoralists. The Nationals have asked that all ambiguity be removed from the amendments. (CM, 30 August, p2)

A spokesperson for Deputy Prime Minister, Tim Fischer, said the National Party leader told a meeting of landholders and the NSW Farmers Association that new primary producer activities on pastoral leases in the western division of NSW would be free of native title impediments. Mr Fischer also warned farmers to back the proposed Bill protecting additional primary production activities or risk uncertainty. (CT, 31 August, p5)

Senator Nick Minchin said he had assurances that the Senate parties would co-operate with the government over the Bill, ensuring that the Senate does debate the legislation in this term of the parliament with the objective of having it passed before the end of the year. (Ad, 1 Sept, p13)

The National Farmers Association will join sections of the National Party this week to demand the Government toughen the Bill and reject amendments by the Labor Party and the Democrats. Senator Nick Minchin said 'the core elements' of the plan were not negotiable but the government would consider amendments that could be improvements to the Bill. (Fin R, 1 Sept, p6)

The schedule of exclusive tenures for Western Australia lists 500 different activities said to extinguish native title. (WA, 2 Sept, p. 31)

United Graziers Association President, Larry Acton, said the bush was disillusioned with the native title amendments, saying the changes to the legislation will not deliver the certainty the Prime Minister promised. (CM, 2 Sept, p7)

The Prime Minister, John Howard, faces disquiet among his own back benches and pressure from National Party MPs for the tightening of the threshold test for registration of native title claims. (CM, 2 Sept p. 7)

Australian Petroleum Production and Exploration Association Executive Director, Mr Barry Jones, said the upstream oil and gas industry approves the proposals in the Bill which will validate potentially invalid petroleum titles by suppressing native title rather than by extinguishing it, with the Crown, which had issued the titles, to pay compensation to native title holders for impairment of native title which arose from the validation process. APPEA also welcomed the introduction of amendments to streamline the operations of the right to negotiate process, and to remove ambiguity over the renewal of valid and validated titles. (*Media Release, 4 Sept*)

The Native Title Amendment Bill was introduced into the parliament and immediately referred to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islanders Land Fund for consideration and report by October 27. Committee Chair, Mr Warren Entsch MP, said that the committee would complete a comprehensive program of public hearings, over ten days, before finalising the report. (*Media Release, 4 Sept*)

Leader of the Opposition, Kim Beazley, has said the Native Title Amendment Bill will create greater uncertainty for pastoralists and miners and criticised the sunset clause. (*Media Release, 4 Sept*)

The introduction of the Bill in the House was marked in the Senate by the passage of a motion in support of Australians for Native Title and Reconciliation. The motion, in part, recommends that disputes over native title be resolved by discussion and not by extinguishing native title. The motion passed with the support of all parties. (*Media Release, 4 Sept*)

The Australian Conservation Foundation have criticised the Prime Minister, John Howard, over his claim that Aboriginal people have the right of veto over the further development. Mr Jim Downey, Executive Director of the ACF said that Aboriginal people do not have such veto powers because the High Court confirmed pastoralists' rights. (*Media Release, 5 Sept*)

Victorian Premier, Mr Jeff Kennett, welcomed the Federal Government's Native Title Amendment Bill saying it would provide greater certainty for indigenous and non-indigenous Australians. Mr Kennett also said The Native Title Amendment Bill is a fair and reasonable solution to an unworkable piece of legislation that was not serving anyone's best interests. (*Media Release, 5 Sept*)

The National Party of Australia will press for further tightening of the threshold test and inclusion of NSW Lands Division Grazing Leases. The National Party Federal Council will ask the Prime Minister to make an urgent and direct approach to Premier Carr on this matter. (*Media Release, 6 Sept*)\*

Kimberley Land Council executive director Peter Yu condemned comments by Prime Minister Howard that Aboriginal people have the right to veto development. Mr Yu also said the signing of five agreements in the recent weeks proved the system was working. (*WA, 6 Sept, p6*)

National Party President, Don McDonald, said the wording in the

legislation needed to be stronger to withstand challenges in court. Mr McDonald said the Prime Minister had given a clear undertaking that substantive amendments would not be accepted. The National Party has given support to a double dissolution election in order to secure the passage of the Bill unamended (*CM, 8 Sept, p5*)

Queensland Independent MP, Pauline Hanson, met National Party backbenchers to garner support for amendments to the bill. Spokesperson for Ms Hanson, Mr Oldfield, said Ms Hanson is opposed to the Bill and will be voting 'against the concept of native title'. (*CT, 8 Sept, p3*)

The National Party's Federal Council voted for amendments to be made to strengthen the threshold test. Mr Fischer said there was no reason for National Party Senators to vote against the provisions of the Bill which supported a National Farmers Federation and the National Party demands for: certainty for leaseholders. Leader of the Government in the Senate, Senator Hill, supported Mr Fischer's contention the National Party Senators would remain solid. (*SMH, 8 Sept, p2*)

Farmers in Western NSW have called for the inclusion of Western Division leases on the schedule of leases drawn up by the Government as part of the Native Title Amendment Bill. The Minister for Primary Industries and Energy, John Anderson, said he did not believe that the Western Division leases were "ever meant to imply anything other than exclusive occupancy and possession". NSW Farmers Association Senior President, John Cobb, said that legal opinions, stating that Western Division leases confirmed exclusive possession, had been passed onto the Federal Government. (*Media Release, 8 Sept*)

The Prime Minister said the government did not want a double dissolution over the Amendment Bill. (*Age, 9 Sept, pA4*)\* However, Mr Howard affirmed that they will not accept any changes to the basics of the bill. (*CT, 9 Sept, P2*)

Aboriginal Land Councils said the right to negotiate did not go far enough, applying only to crown land which had never been subject to an expired lease or other grant. (*CT, 9 Sept, P2*)

Prime Minister John Howard said the rural sector would not get a better deal than that presented in the Amendment Bill and warned farmers they would be subject to lengthy court battles without the new legislation. (*WT, 10 Sept, p4*)

The Federal Opposition and Indigenous groups have criticised the Prime Minister for misrepresentations in his suggestion that the right to negotiate and development proposals effectively give native title claimants a veto. Mr Howard said the long time delays under present right to negotiate represents, in practice, a right of veto. (*Age, 11 Sept, pA12*)\*

ATSIC chair, Gatjil Djerrukura, has said that the amendments had fanned the fires of racial division. (*Tel M, 11 Sept, p7*)\*

Australians for Native title and Reconciliation advise that so far over 40,000 signatories have endorsed the High Court's decisions as just and correct. (*Media Release, 11 Sept*)

The National Farmers Federation has called on the Federal Government to impose a sunset clause on common law claims as well as claims lodged under the Native Title Act. NFF President, Don McGauchie, said failure to block access to the courts after that period would bring endless uncertainty for farmers. National Indigenous Working Group member, Glenn Shaw, dismissed the NFF proposal suggesting that it was like Aboriginal people calling for the Government to extinguish all pastoral leases. *(WA, 11 Sept, p30)\**

Federal Aboriginal Affairs Minister, John Herron, praised regional agreements as a way of bypassing the rigours of the native title process. Senator Herron said regional agreements were an important part of the governments' changes to the Native Title Act. A spokesperson for Mr Borbidge said that if regional agreements were to be successful they would need to be developed in different manner than the Cape York agreement. However, the spokesperson said the proposed amendments to the Act would allow greater potential for local and area agreements. *(CM, 11 Sept, p7)\**

Senior Labor front benchers are urging Opposition Leader Kim Beazley to "draw a line in the sand" and fight the Wik amendments in the Senate. *(CM, 12 Sept, p9)*

The Law Institute of Victoria passed a resolution stating that the amendments severely limited the rights of indigenous people to negotiate on mining and pastoral developments. *(Age, 12 Sept, pA5)*

Former Federal Human Rights and Equal Opportunity Commissioner Sir Ronald Wilson has criticised the Prime Minister's belief that Aboriginal legal rights should be cut back, as a tragedy. Sir Ronald said the Native Title Act 1993 embodied the spirit of the Mabo decision and any leader of this country who seeks to depreciate and denigrate the distinct significance of that decision is 'very un-Australian'. *(WA, 15 Sept, p10)*

The National Party has said it will support the Bill despite divisions which have seen some of its senators threaten to cross the floor. Senate leader of the National Party, Senator Ron Boswell, reaffirmed the party's commitment to vote for the legislation, saying the party and National Farmers Federation had worked hard to improve the Bill. NFF Executive Director, Dr Wendy Craik, agreed that the Amendments were an improvement on the Native Title Act, but the NFF still had fundamental concerns about the Bill. *(WA, 15 Sept, p10)*

Queensland National Party Senator, Bill O'Chee, said that native title would not be allowed to prevent the development of public facilities like football clubs or golf courses if the Coalition's Native Title legislation is allowed to pass. *(Media Release, 16 Sept)*

The New South Wales Government received State and Federal legal advice confirming pastoral leases in Western NSW could not be included in a schedule of lands which extinguish native title. Mr Carr told State parliament he had received advice from the Crown Law Office and from independent legal experts. *(Tel M, 18 Sept, p. 4)*

Victorian Uniting Church leaders have stated that the church is opposed to the government's amendment plan and wished to see the Government

enter into true negotiations with Aboriginal people. (*Age*, 19 Sept, pA11)

There has been a rush of applications by Aboriginal groups attempting to beat the Native Title Amendment Bill. ATSIC Deputy Chair, Ray Robinson, said Indigenous people were worried about losing their rights and the recent claims reflected their uncertainty. United Graziers Association president Larry Acton said further native title claims should be put on hold until the new laws came into force. (*CM*, 20 Sept, p1)\*

Senator Nick Minchin has criticised groups such as the Australians for Native Title and Reconciliation for allegedly promoting a misrepresentation of the High Court's Wik decision and the Federal Government's Amendment plan. (*Media Release*, 20 Sept)

Father Frank Brennan speaking at the Australian Legal Convention said that moving from leasehold to exclusive freehold possession was not a guarantee of certainty. Fr Brennan said provisions permitting State Governments to offer "upgraded" tenure in the hope of over-riding and extinguishing native title ran a grave risk of being held in breach of *the Racial Discrimination Act 1975*. A paper by the Kimberley Land Council Chairman, Mr Peter Yu said the amendments, if passed, would have a devastating impact on the Karrajarrri people and their attachment to a destocked pastoral lease called Nita Downs. (*Fin R*, 22 Sept, p7)\*

Deputy Prime Minister Tim Fischer said native claims made since June 1996 would be subject to the new test if the Amendment Bill is passed by Parliament. Mr Fischer confirmed the legislation would be backdated to June 27 1996 - the date the Federal Government first introduced Native Title Amendments into parliament. (*WA*, 22 Sept, p10)\*

Parliamentary Secretary, Senator Nick Minchin, said mining companies in particular had signalled support for the Amendments in relation to the negotiation of agreements with native title claimants. Senator Minchin said the use of regional agreements, which avoid the need for formal processes to determine native title claims was an example of practical reconciliation. Senator Minchin also commented on the recent rush of native title claims in Queensland saying that any claim lodged now would be determined under new rules, not under the existing Native Title Act. Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson, criticised the government's plan to make the laws retrospective, saying legitimate claims are now going to be made unlawful. (*CM*, 22 Sept, p2)\*

Approximately 620 types of leases, covering 7 percent of the continent and about 70,000 individual leases will be protected from the native title claims under the proposed schedule of exclusive tenures. Aboriginal people claim that the list preempts possible court action and is based on flawed legal advice. The Executive Director of the National Farmers Federation, Dr Wendy Craik, said the area of pastoral leases covered by the list was insignificant which means the uncertainty will continue. Dr Craik said that in spite of intense lobbying the western division leases have not been included in the list. (*SMH*, 24 Sept, p1)\*

Former Attorney General, Michael Lavarch, said the Amendment Bill could win eventual Labor Party support. Mr Lavarch said despite the political hurdles there remained room for Labor to negotiate a compromise. (*Tel M*, 24 Sept, p5)\* Mr Lavarch also suggested that the



Prime Minister's major bargaining party will be the opposition and not the Greens nor the Democrats. (*HS, 24 Sept, p14*)

It has been alleged that Attorney-General, Mr Daryl Williams, tried to stop the Australian Law Reform Commission giving evidence to the Joint Parliamentary Committee examining the Amendment Bill. It is possible that Mr Williams' actions had been in contempt of Parliament. The Commission President, Mr Alan Rose, said that he had been contacted last week by the acting head of Mr Williams' department Mr Norman Raeburn and urged not to appear before the committee. A spokesperson for Mr Williams said the Attorney-General would not prevent the commission appearing before the Parliamentary Committee if the Committee required it to do so. (*Age, 30 Sept, pA4*)\* The National Indigenous Working Group and the Opposition have called on Mr Williams to resign. (*WA, 30 Sept, p4*) Leader of the Democrats, Senator Cheryl Kernot, commented on the seriousness of the matter, not only in the possible suppression of evidence to a parliamentary committee but also whether the Attorney-General has misled the Parliament by denying that any threats of suppression were made". (*Media Release, 29 Sept*)

The Australian Law Reform Commission submission's main points of criticism are: the Bill will be subject to a constitutional challenge, leading to a continuation of uncertainty; it would "very likely" breach Australian's obligations under international law, including the Universal Declaration of Human Rights; to the degree it extinguishes native title, it will expose the Government to a high level of compensation claims; and it will promote a feeling of social injustice. The Commission advocates an alternative approach, involving laws that uphold the principles of the co-existence of leasehold and native title rights. (*CT, 30 Sept, p1*)\*

The National Farmers Federation has told the Parliamentary Committee farmers must reject the Bill because they are the people most affected by it, not Aboriginal people. NFF President, Donald McGauchie, said attempts to share title between farmers and Aboriginal people were unworkable and called for amendments to toughen the tests and restrict the time for native title claims. (*HS, 30 Sept, p16*)

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# GENERAL NATIVE TITLE ISSUES

## National

A United Nations report critical of the Federal Government's approach to land rights said government policy was 'wrought with discriminatory and colonial biases'. The report was released to Indigenous leaders attending the United Nations Working Group on Indigenous Populations. Aboriginal Affairs Minister John Herron criticised the report as inaccurate. (*Aus, 1 August, p 6*)\*

Former Chief Justice of the High Court, Sir Harry Gibbs, described the *Native Title Act 1993* as a discriminatory, unfair and ill-conceived