

## **NATIVE TITLE IN THE NEWS - MARCH & APRIL 2000**

### **National**

A panel to provide advice and assistance to people involved in native title cases (other than native title claimants) has been established by the Commonwealth Attorney-General's Department. The panel includes solicitors, barristers, mediators, anthropologists, historians and archaeologists. (*NTN News (Qld) Feb 2000, p4*) (see report p15)

A web site has been launched to help mediate disputes over native title claims. The site offers a step by step guide to use mediation in land claim issues. The web site is sponsored by the Department of Immigration and Multicultural Affairs and can be located at <http://www.tcgproject.org> (*Robinvale Sentinel, 30 March, p3*)\*

The Hon Chris Sumner and the Hon Fred Chaney AO have both been re-appointed to the National Native Title Tribunal as full-time Deputy Presidents for a period of three years. Dr Mary Edmunds has been re-appointed as a part-time member of the Tribunal also for a period of three years. (*Attorney General, News Release, 12 April*)

The annual Native Title and Social Justice Reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner was tabled in Federal Parliament. The Reports consider the principles upheld by the UN Committee on the Elimination of Racial Discrimination (CERD). (see report page 18) (*HREOC Media Release, 6 April*)

Federal Opposition Aboriginal Affairs spokesman the Hon. Daryl Melham stated in a television interview that a Labor government would not repeal the *Wik* amendments to the *Native Title Act 1993* which extinguished native title on leased lands. (*Aus, 10 April, p6*)

### **New South Wales**

The title deeds for a 100 hectare property known as Toms Gully, located 40 kilometres west of Kempsey, have been handed back to the Wunduayn Gunggu Barrunggin (Big River Dreaming) Inc, which is made up of 50 traditional owners. The property was purchased in 1995 by the Indigenous Land Corporation. (*Koori Mail, 5 April, p15*)\*

The full bench of the Federal Court has ruled that pastoral grazing leases do not extinguish native title. The majority decision relates to Western Division land leases in New South Wales covering 32.5 million hectares and reinforces the 1996 *Wik* decision. A native title application was lodged by Michael Anderson on behalf of the Euahlay-I Dixon Clan of north west New South Wales. The claim area included land 30 kilometres south of the Queensland border which was held under this unique kind of tenure. (*Aus*, 6 April, p4)\*

### **Anderson v Wilson**

On 5 April the full Federal Court, in *Anderson v Wilson* ([2000] FCA 394), determined whether Western Division land leases in New South Wales extinguished native title or left open the potential of co-existence of native title rights over their particular form of lease.

The lessees, who were the applicants in the case, asked whether the lease conferred the right of exclusive possession on the lessee, either first by virtue of the *Western Lands Act 1901* (NSW), the regulations pertaining to the Act at the time of the grant of the lease, or second any of the terms or conditions of the lease. If the answer to either of the first two questions was yes, a third question asked the Court to decide on whether the grant of the lease extinguished native title altogether or suspended native title rights for the duration of the lease.

In making their judgements, all of the justices noted the problems with the questions and how they had been set out. In this instance the questions raised were similar to those raised in *Wik* and had similar problems in that they obscured the main issue at hand. The full bench agreed that the central focus of the inquiry should not be whether Mr Wilson's lease granted exclusive possession but whether the rights conferred on him as lessee were inconsistent with any native title rights that may exist over the land.

The Court followed the majority findings of the High Court of Australia in *Wik*.

All Judges found that in the provisions of the lease itself there was nothing to suggest that the rights conferred on the lessee were inconsistent with every incident of native title that may exist in relation to the leased land. This stemmed from the conditions placed on the leaseholder by the terms of the lease, including the restrictive nature of the lease (in this instance, grazing) and the exceptions and reservations to the lease which allowed resumption of land

without compensation or persons authorised by the Western Lands Commissioner to carry out certain activities. To ascertain what native title may exist in relation to the leased land it would be necessary to look at the evidence which in the present case was not before the Court. In short, nothing inherent in the leasehold contract necessarily extinguished native title.

The Judges adopted the view as expressed in *Ward* that it was possible that there could be partial extinguishment of native title rights. In the case before the court, however, it could not be certain that all native title rights and interests had been extinguished or indeed which particular native title rights had been extinguished as no evidence had been taken in relation to native title rights.

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## Victoria

The Robinvale native title claim has been registered with the Federal Court. The application covers land on the Victorian side of the Murray River as well as the River itself and includes parts of the Hattah-Kulkyne National Park, the Murray-Kulkyne National Park and Bumbang Island as well as State forests, reserves and other Crown land. The application was lodged on 27 March 1996 and passed the registration test on 3 June 1999. People who are accepted by the Federal Court as parties to the proceedings can take part in mediation of the application before the NNTT. (*Swan Hill Guardian, 8 March, p3*)\*

The National Native Title Tribunal has welcomed moves by the Victorian Government to try to settle the State's outstanding native title applications through mediation. Tribunal President Graeme Neate stated that litigation of native title cases was a lengthy and costly exercise and that many applications could be settled by mediation. (*NNTT Media Release, 8 March*)

Mirimbiak Nations Aboriginal Corporation announced support for the Portland Cable Tram Project in Glenelg Shire on behalf of the Gournditch-Mara native title claimants. Mirimbiak hopes to have further involvement in the project through discussions relating to employment possibilities during the construction phase and options of incorporating Aboriginal heritage into the Cable Tram project. (*Casterton News, 29 March, p5*)

### **Victoria's native title policy**

At the Mirimbiak NTRB's legal conference (*see report page 3*) convened by Bryan Keon-Cohen QC in April, the Attorney General for Victoria, the Hon. Rob Hulls MP, outlined the State government's approach to native title issues. The Attorney began by acknowledging Indigenous people as the original owners and custodians of Victoria and recognising that 'the centrepiece of reconciliation with Indigenous Victorians is addressing the dispossession of Aboriginal land and culture'. The Attorney confirmed a commitment to negotiation and mediation on a 'whole of government approach' which would see co-ordinated management of issues across all relevant government departments or agencies. In conjunction with the new native title policy, the government is preparing a Mediation Framework Principles document. Framework agreements with applicants and their representatives and other interested parties will 'guide and give structure to the negotiations and mediation process.' While some settlements, the Attorney argued, may be dealt with appropriately by ILUAs or by an alternative package of benefits including employment, education and training or greater involvement in land management, the Attorney reinforced the importance of recognising native title as a possible outcome.

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### **Queensland**

The Bailai, Gooreng Gooreng and Gurang family groups have agreed to operate as a single reference group for all future negotiations relating to native title. (*LRQ, March 2000, p13*)

Four native title claimant groups, the Kullulli, Wangkamurra and two Bunthamurra people's groups, have rejected a compensation offer from Santos Ltd over land for a gas pipeline and have called for a Queensland Government negotiator. (*Koori Mail, 8 March, p34*)

### **South Australia**

Talks have been held between Native Title Management Committees and Mr Trevor Griffin, the South Australian Attorney General, to discuss the possibility of a Statewide Native Title Framework Agreement to provide a set of agreed rules to deal with native title in South Australia. The advantages and disadvantages of negotiations were discussed and a recommendation was passed allowing the Aboriginal Legal Rights Movement to seek funding from the SA

Government for training and information to enable committees to work out their positions in the future of native title in their regions. (*Aboriginal Way, April 2000, p3*)

## **Western Australia**

The Federal Court has handed down a 2-1 decision in the Miriuwung Gajerrong native title case, upholding the appeal by Western Australia in relation to areas of extinguishment but reconfirming the native title of the Miriuwung Gajerrong people. (*DT, 4 March, p10*)\*

The National Native Title Tribunal has called for mediation to settle Western Australia's 151 outstanding native title applications. Tribunal President Graeme Neate stated that Court action to settle native title issues was a lengthy and costly undertaking. 'While test cases such as Miriuwung Gajerrong are necessary, the vast majority of the 561 native title applications in Australia can and should be settled by mediation,' he said. (*NNTT Media Release, 7 March*)

Mick Dodson has been appointed to coordinate native title negotiations with the Aboriginal community on behalf of the Western Australian Government in relation to the release of land for the second stage of the Ord River Irrigation Scheme. (*Koori Mail, 22 March, p17*)

Collie Shire Council has reached an agreement that allows the Council to use part of the reserve on Harris River Road for a new depot while the remainder of the land is handed back to the traditional owners. (*Koori Mail, 22 March, p5*)

The National Native Title Tribunal began mediation meetings to assist 14 new and amended native title applications in Western Australia reach agreements without the need for court proceedings. Landholders and other interest holders have 3 months to register as parties if they wanted to join the mediation. The applications covered land, inland waters and some areas of sea in the Pilbara, Kimberley, Gascoyne, South West, Goldfields and Great Southern areas of the State. (*NNTT Media Release, 4 April*)\*

## **Northern Territory**

The Senate has endorsed a negotiated settlement between the Northern Territory Government, pastoralists and the Central Land Council. The Senate voted to deliver three parcels of land to the Territory's Indigenous community

after the Warumungu Land Claim settlement on the Rockhampton Downs Station. This settlement makes a total of 64 parcels of land secured by the community since the *Aboriginal Land Rights (Northern Territory) Act 1976*. (*Northern Territory News*. 20 March, p2)

The National Native Title Tribunal is preparing to begin processing Northern Territory mining and exploration tenement applications. Staff numbers in the Tribunal's Darwin office have been increased to prepare for the expected influx of over 1,000 mining and exploration tenement applications. (*NNTT Media Release*, 23 March)

The National Native Title Tribunal began mediation meetings to assist 8 native title applications in the Northern Territory reach agreements without the need for court proceedings. Landholders and other interest holders have 3 months to register as parties if they wanted to join the mediation. (*NNTT Media Release*, 5 April)

## APPLICATIONS

### National

The National Native Title Tribunal posts summaries of registration test decisions on their website at: <http://www.nntt.gov.au>

The following decisions are listed for March and April 2000.

Wiradjuri people	not accepted	Sec's 1706 / 1714	
Wiradjuri (Oberon)	not accepted	Hundred of Guy	accepted
Harry Douglas Pitt		Part NT Portion 4732	
(Jnr)	abbreviated	Hundred of Guy	accepted
Lot 1348 Katherine	accepted	Sec's 1706 & 1714	
Part NT Portion 4732		Hundred of Guy	accepted
Hundred of Guy	accepted		

The decision indicates whether an application has met or not met each of the conditions of the registration test against which it was considered.

'Abbreviated' decision indicates that the application has been tested against a limited number of conditions.

The applicant may still pursue the application for determination of native title. If an application does not pass the registration test the applicant may seek a review of the decision in the Federal Court.